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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।

Separate paging is given to this Part in order that it may be filed as a separate compilation.

RAJYA SABHA

The following Report of the select Committee on the Enemy Property (Amendment and Validation) Bill, 2016 was presented to the Rajya Sabha on the 6th May, 2016:—

COMPOSITION OF THE COMMITTEE

(Constituted on 15th March, 2016)

Shri Bhupender Yadav—*Chairman*

2. Shri M.J. Akbar
3. Shri Shamsheer Singh Manhas
4. Shri Husain Dalwai
5. Shri K. Rahman Khan
6. Shri P.L. Punia
7. Shri Javed Ali Khan
8. Shri K.C. Tyagi
9. Shri Sukhendu Sekhar Roy
10. Shri S. Muthukaruppan
11. Shri Satish Chandra Misra
12. Shri Ritabrata Banerjee
13. Shri A.U. Singh Deo
14. Shri C.M. Ramesh
15. Shri Praful Patel

16. Shri Tiruchi Siva
17. Shri Anil Desai
- \$*18. Shri Naresh Gujral
19. Mir Mohammad Fayaz
20. Shri Ramdas Athawale
21. Shri Parimal Nathwani
22. Shri D. Raja
23. Shri Ram Kumar Kashyap

SECRETARIAT

- | | | |
|-----------------------------|---|-----------------------------|
| 1. Shri P.P.K. Ramacharyulu | — | <i>Additional Secretary</i> |
| 2. Shri Vimal Kumar | — | <i>Director</i> |
| 3. Smt. Arpana Mendiratta | — | <i>Director</i> |
| 4. Shri Narmadeshwar Prasad | — | <i>Joint Director</i> |
| 5. Shri Bhupendra Bhaskar | — | <i>Deputy Director</i> |
| 4. Shri Anurag Ranjan | — | <i>Assistant Director</i> |

ACRONYMS

CEPI	Custodian of Enemy Property for India
CAPFs	Central Armed Police Forces
CRPF	Central Reserve Police Forces
CISF	Central Industrial Security Force
NSG	National Security Guard
PSUs	Public Sector Undertakings
NTC	National Textile Corporation
NCT of Delhi	National Capital Territory of Delhi

* Shri Naresh Gujral ceased to be the Member of the Committee due to his retirement from Rajya Sabha on 9.4.2016.

\$ Shri Naresh Gujral re-appointed as a Member of the Select Committee *w.e.f.* 25th April, 2016 .

INTRODUCTION

I, the Chairman of the Select Committee of the Rajya Sabha on the Enemy Property (Amendment and Validation) Bill, 2016, to whom the aforesaid Bill, as passed by Lok Sabha was referred for examination and report, having been authorized by the Committee to present the report on its behalf, present this report of the Select Committee alongwith the Bill, annexed thereto.

2. The Enemy Property (Amendment and Validation) Bill, 2016 was introduced in the Lok Sabha on 8th March, 2016 to replace the Enemy Property (Amendment and Validation) Ordinance, 2016 promulgated by the President on 7th January, 2016 and the Bill was passed in the Lok Sabha on 9th March 2016. The Bill, as passed by Lok Sabha, was referred to the select Committee comprising 23 Members of Rajya Sabha on a motion moved in the House by the Minister of Home Affairs and adopted by the House on 15th March, 2016, for examination and presentation of Report thereon to the Rajya Sabha by the last day of the first week of the 239th session ^ . After the first part of the Budget session, Rajya Sabha was prorogued and the next session *i.e.*, 239th session was summoned *w.e.f.* 25.4.2016. Accordingly, the Chairman of the Committee moved a motion in the House on 25th April, 2016* substituting the words “second part of 238 session” by “next session”. The Chairman further moved a motion in the house on 28th April, 2016# seeking extension of time for presenting the report on the Bill upto 6th May, 2016.

3. The Bill seeks to further amend the Enemy Property Act, 1968 and the Public Premises(Eviction of Unauthorised Occupants) Act, 1971.

4. The Committee held 10 meetings in all. The Committee in its first meeting held on the 28th March, 2016 considered the procedural aspect of the working of the Committee to accomplish its assigned work within the given time schedule. It decided to issue a Press Release in prominent newspapers of all the States and Union Territories where enemy properties exist, to get views suggestions in writing from individuals/organisations/institutions/experts on the provisions of the Bill. It also decided to seek written views of State Governments/UT administrations where enemy properties existed and hear the Chief Secretaries/administrators of concerned States/UTs. The Committee also decided to hear the Attorney General of India on the subject. The Chairman requested Members to suggest names individuals/experts who may be invited before the Committee for submission of their views on the Bill. The Committee thereafter heard the presentation of the Additional Secretary, Ministry of Home Affairs on the Bill. The Committee at its sitting held on the 4th April 2016 heard the Home Secretary particularly on the legislative intent of the Bill and sought clarifications on the issues/queries raised by the Members of the Committee. It also heard views of the stakeholders and experts on the Bill.

5. In its meeting held on the 5th April 2016, the Committee heard views of some experts including legal luminaries on the Bill. The Committee in its next meeting held on 11th April 2016 took oral evidence of some experts and Chief Secretaries of Governments of NCT of Delhi, Telangana and representatives of Governments of Uttar Pradesh, Bihar, Kerala, Uttarakhand. However, the meeting remained inconclusive due to absence of representatives of various State Governments and ill preparedness of representatives of some states who appeared before the Committee on that day.

6. The Committee in its sitting held on 12th April 2016 further heard an expert and Attorney General of India on the Bill. The Committee in its sitting held on 19th April 2016

^ Parliamentary Bulletin Part-I number 5249 of Rajya Sabha dated 15th March, 2016

* Parliamentary Bulletin Part-I number 5251 of Rajya Sabha dated 25th April, 2016

Parliamentary Bulletin Part-I number 5254 of Rajya Sabha dated 28th April, 2016

again heard the Chief Secretaries/ representatives of concerned State Governments/UTs on various provisions of the Bill.

7. A list of witnesses who appeared before the Committee is at Annexure-I. A list of persons/stakeholders/experts who submitted written Memoranda is at Annexure-II.

8. The Committee in its meeting held on 28th April 2016 took up clause-by-clause consideration of the Bill.

9. The Committee, while making its observations/recommendations, has relied mainly upon the following papers received from the Ministry of Home Affairs and others:

- (i) Background note on the Bill ;
- (ii) The Enemy Property Act, 1968;
- (iii) The Enemy Property (Amendment and Validation) Bill, 2010;
- (iv) The Enemy Property (Amendment and Validation) Ordinance, 2010;
- (v) The Enemy Property (Amendment and Validation) Ordinance, 2016;
- (vi) Comparative chart between the Enemy Property (Amendment and Validation) Second Bill, 2010 and the Enemy Property (Amendment and Validation) Bill, 2016, indicating the similarities and differences in various clauses;
- (vii) Public Premises (Eviction of Unauthorized Occupants) Act, 1971;
- (viii) The Defence of India Act, 1962;
- (ix) The Defence of India (Amendment) Rules, 1962;
- (x) Summary of relevant judgments of the Courts (including their citations);
- (xi) Verbatim proceedings of the meetings of the Committee held on 28th March, 2016; 4th , 5th ,11th 12th , 19th, 25th, 26th, 28th April, 2016; and 4th May 2016;
- (xii) Replies to the queries/issues raised by the Members and amendments given by them in various meetings of the Select Committee as received from the Ministries of Home Affairs and law & Justice; and
- (xiii) Memoranda received from various stakeholders and legal experts and comments received from the Ministry thereon.

10. The Committee considered the draft Report at its sitting held on the 4th May 2016 and adopted the same.

11. The Committee wishes to express its thanks to the officials of the Ministries of Home Affairs and Law and Justice concerned with the Bill for furnishing necessary information/documents and rendering valuable assistance to the Committee in its deliberation. The Committee also extends its thanks to all the distinguished persons who appeared before the Committee and placed their considered views on the Bill and furnished written memoranda and inputs which the Committee had desired in connection with examination of the Bill.

12. For facility of reference and convenience, the observations and recommendations of the Committee have been printed in bold letters in the body of the Report.

NEW DELHI;
4th May, 2016
14 Vaisakha, 1938 (Saka)

BHUPENDER YADAV
Chairman,
Select Committee on the Enemy Property
(Amendment and Validation) Bill, 2016

REPORT

CHAPTER I

BACKGROUND AND SALIENT FEATURES OF THE BILL

1.1 Introductory

1.1.1 The Enemy Property (Amendment and Validation) Bill, 2016 was introduced in the Lok Sabha on 8th March 2016 and passed by that house on the following day *i.e.* 9th March 2016. The Rajya Sabha in its sitting held on the 15th March, 2016 adopted a motion for reference of the Enemy Property (Amendment and Validation) Bill, 2016, as passed by Lok Sabha, to a Select Committee of the Rajya Sabha with instructions to report to the Rajya Sabha by the last day of the first week of second part of the 238th session. After the first part of the Budget session, Rajya Sabha was prorogued and the next session *i.e.*, 239th session was summoned *w.e.f.* 25.4.2016. Accordingly, the Chairman of the Committee moved a motion in the House substituting the words “second part of 238 Session” by “next session”. In the motion, the Bill seeks to further amend the Enemy Property Act, 1968 and the Public Premises (Eviction of Unauthorised Occupants) Act, 1971. The Bill also seeks to replace the Enemy Property (Amendment and Validation) Ordinance, 2016, promulgated by the President on the 7th January, 2016.

1.1.2 The background note on the Enemy Property (Amendment and Validation) Bill, 2016 as furnished by the Ministry of Home Affairs stipulates that in 1962, in the wake of Chinese aggression, the Custodian was called upon to take charge of the Chinese assets in India with the object of vesting the movable and immovable properties of the Chinese subjects left in India under the Defence of India Rules, 1962 specifying the enemy nationals and the properties held by them. Similarly, in the wake of the Indo-Pak war of 1965 and 1971, there was migration of people from India to Pakistan. Under the Defence of India Rules framed under the Defence of India Act, the Government of India took over the properties and companies of such persons who had taken Pakistani nationality. These enemy properties were vested by the Central Government in the Custodian of Enemy Property for India (CEPI).

1.1.3 The Ministry of Home Affairs in its background note further explained that India and Pakistan signed the Tashkent Declaration on 10.01.1966, which *inter alia* included a clause, which said that the two countries would discuss the return of the property and assets taken over by either side in connection with the conflict. Clause VIII of the Tashkent Declaration read as follows:

“The Prime Minister of India and the President of Pakistan have agreed that the sides will continue the discussion of questions relating to the problems of refugees and evictions/illegal immigrations. They also agreed that both sides will create conditions which will prevent the exodus of people. They further agreed to discuss the return of the property and assets taken over by either side in connection with the conflict.”

1.1.4 However, the Government of Pakistan unilaterally sold or otherwise disposed off all the enemy properties and assets, movable and immovable, of Indian nationals, firms, companies etc. in their country in the year 1971 itself. While in India, the enemy properties still continue to vest in Custodian of Enemy Property for India (CEPI).

1.1.5 In this background, The Enemy Property Act, 1968 was enacted on the 20th August, 1968 by the Government of India. The Enemy Property Act as amended in 1977, provides for the continued vesting of enemy property vested in the CEPI under the Defence of India Rules, 1962, and the Defence of India Rules, 1971 and the matters connected therewith. The Central Government through the CEPI is in possession of enemy properties spread across many States in the country. The properties vested in the CEPI include both movable

and immovable properties. The immovable properties are valued at more than rupees one lakh crore, while the valuation of movable property is more than rupees three thousand Crore.

1.2 Reasons and necessity for proposed amendments in the Enemy Property Act, 1968

1.2.1 The Ministry informed the Committee that in the initial stages of the functioning of the Custodian of Enemy Property for India, courts supported Government's action and upheld automatic vesting of enemy properties in the Custodian and restrained themselves from interfering in the orders passed by the Custodian. Of late, however, there have been various judgments by various Courts that adversely affected the powers of the CEPI and the Government of India as provided under the Act. Summary of some of such judgments including their citation is given below:—

- (i) In its judgment in *Union of India Vs Raja M.A.M. Khan*, 2005 (8) SCC 696, the Supreme Court on 21st October, 2005 held that:
 - (a) On the death of an "Enemy", the property devolves in succession and ceases to be "Enemy Property" if the successor is a citizen of India.
 - (b) The Enemy subject has the power to sell the property by virtue of section 6 of the Act.
 - (c) The Custodian has no right or title in the property and the Enemy continues to have the right, title and interest in the property.
 - (d) Natural legal heirs and successors, who are "citizens of India" would be entitled to the property under the "Law of Succession".
 - (e) The Central Government does not have absolute power for divesting under section 18 of the Act and the power of the Court is not taken away to pass an appropriate order in a case where the property which vested in the Custodian ceases to be Enemy Property.
 - (f) On divestment of the property, the divestee would be entitled to the actual mesne profits by filing a suit, if so advised.
 - (g) The Custodian's power is limited to managing, preservation and control of Enemy Property for a limited purpose and for a temporary period only.

A Review Petition filed by Union of India was dismissed on the 16th December, 2005. Consequently, the judgment was implemented.

- (ii) In the case of *Rameshwar Dayal & Ors Vs. Custodian of Enemy Property for India & Others* (Civil Misc. Writ Petition No. 4490 of 1976) connected with civil misc. Writ petition No.4484 of 1976), the Allahabad High Court held that—

"there is no provision in the Act or Defence of India Rules, which empower the Custodian of Enemy Property to, in a case where someone disputes that a particular property is an enemy property, adjudicate or to give a determinative finding on the point in controversy. Likewise, there is no provision in the Act or the Rules which empowers the Custodian to take forcible possession of any property which he claims to have vested in him as enemy property. Whenever such controversy is raised, it has to be resolved by raising the issue in appropriate civil proceedings."

No appeal was filed in this case and the judgment has become final.

- (iii) In the case of *Chandra Madhab Sen & Ors Vs Union of India and Ors.* (Writ Petition No. 1187 (W) of 2016)—

"The Calcutta High Court disposed the Writ Petition on 10th March 2016, directing the Ministry of Home Affairs, Union of India to take the proceeding

initiated vide notice dated April 27, 2015 to its logical conclusion in the manner directed by a coordinate Bench of this Court while disposing of W.P. 15046(W) of 2011 by the order dated 31st July, 2014 not later than four months from the date of receipt of a copy of this order. The court has also allowed the petitioner an opportunity of personal hearing before a final order is passed. In the event the final order is adverse to the interest of the petitioner, the same must be supported by reasons. On the contrary, if the petitioner's claim is accepted, follow up steps in accordance with law shall be taken without any delay."

- (iv) In the *Ambu Trikam Parmar Vs. Union of India & Others* (Writ Petition No. 843 of 2009) the Bombay High Court had held that—

"under the provisions of the Act, there is no power in the CEPI to evict a person in unauthorized occupation, without following due procedure which is by instituting legal proceeding or such steps for recovery which may be available in law."

- (v) In the *Jeelani Begum & Others Vs. Union of India & Others* (Writ Petition No.23835 of 1999 and Writ Petition No.8168 of 2006) the High Court of Andhra Pradesh had held that—

"(a) In the light of the ratio laid down by the Supreme Court in Raja Mohammad Amir Mohammad Khan's case, it is clear that the vesting in the Custodian does not divest the right of the enemy and what was contemplated under the Act was only temporary vesting in the Custodian which is limited to the extent of possession, management and control over the enemy property temporarily. Section 18 of the Act provides for divesting the Custodian of such property. The Central Government is empowered to make such order under Section 18.

(b) In the case on hand, it is apparent that the Central Government had failed to exercise such discretion conferred under Section 18 of the Act. The impugned order is not only cryptic but also without application of mind to any of the relevant factors. The only reason assigned in the impugned order that the property being the enemy property cannot be divested under Section 18 of the Act is contrary to the scope and object of Section 18 read with the other provisions of the Act as explained by the Supreme Court in Raja Mohammad Amir Khan's case. Hence, the impugned order is liable to be set aside on that ground alone.

(c) Accordingly the Central Government is directed to consider the representation of the petitioners afresh and pass appropriate orders in accordance with law in terms of the decision of the Supreme Court in Raja Mohammad Amir Mohammad Khan's case as expeditiously as possible preferably within a period of three months from the date of receipt of this order after affording due opportunity to the petitioners to substantiate their right, title and interest in respect of the property in question."

1.2.2 The Statement of Objects and Reasons of the Bill says that in view of such interpretation of the provisions of the Enemy Property Act, 1968 by various courts, the Custodian is finding it difficult to sustain his actions under the Act. It has, therefore, become necessary to amend the Enemy Property Act, 1968, *inter alia*, to clarify the legislative intention with retrospective effect providing—

- (a) that the definition of "enemy" and "enemy subject" shall include the legal heir and successor of any enemy, whether a citizen of India or a citizen of a country which is not an enemy and also include the succeeding firm of an enemy firm in the definition of "enemy firm" irrespective of the nationality of its members or partners;

- (b) that the enemy property shall continue to vest in the Custodian even if the enemy or enemy subject or enemy firm ceases to be enemy due to death, extinction, winding up of business or change of nationality or that the legal heir or successor is a citizen of India or a citizen of a country which is not an enemy;
- (c) that the enemy property shall continue to vest in the Custodian with all rights, title and interest in the property and the Custodian shall preserve the same till it is disposed of by the Custodian, with the prior approval of the Central Government, in accordance with the provisions of this Act;
- (d) that the Custodian shall, after making such inquiry as he deems necessary, declare that the property of the enemy or the enemy subject or the enemy firm vest in him under the aforesaid Act and issue a certificate to that effect which would be evidence of the facts stated therein;
- (e) that the law of succession or any custom or usage governing succession shall not apply in relation to enemy property;
- (f) that no enemy or enemy subject or enemy firm shall have any right and shall never be deemed to have any right to transfer any property vested in the Custodian and any transfer of such property shall be void;
- (g) that the Custodian, with prior approval of the Central Government, may dispose of the enemy properties vested in him in accordance with the provisions of the said Act and for this purpose the Central Government may issue such directions to the Custodian which shall be binding upon him; and
- (h) that the Central Government may transfer the property vested in the Custodian which was not an enemy property to the person who has been aggrieved by the vesting order issued by the Custodian.

1.2.3 The Statement of Objects and Reasons of the Bill, further stipulates that in order to have speedy and effective eviction of unauthorised occupants from the enemy property under the Custodian, it is proposed to amend the Public Premises (Eviction of Unauthorised Occupants) Act, 1971, so as to declare the Custodian, Deputy Custodian and Assistant Custodian of Enemy property appointed under the Enemy Property Act, 1968 as “Estate officer” in respect of the enemy properties.

1.3 Salient features of the Enemy Property (Amendment and Validation) Bill, 2016

1.3.1 The Enemy Property (Amendment and Validation) Bill, 2016 proposes to amend following necessary/suitable provisions in the principal act to enable the custodian of Enemy Property for India and the Central Government of India to preserve and manage the enemies properties, movable and immovable, more effectively:—

- (i) Insertion of new provision in section 2(b) of the principal Act in the definition of “enemy” subject and enemy firm. In Section 2 (b) *Definition of “enemy” or “enemy subject” includes the legal heir and successor of the enemy, even if a citizen of India citizen of a non-enemy country. And “enemy firm” includes its succeeding firm, even if the members are the citizen of India or citizen of a non-enemy country. The purpose of the proposed amendment is to clarify that the law of succession shall not apply to the legal heir or successor of the enemy.*
- (ii) Insertion of new provision in the Act in section 2 (c), as Proviso to definition of enemy property providing that irrespective of the place of death of the enemy subject, his properties shall continue to vest as Enemy Property in the Custodian.
- (iii) Amendment in Section 5(3) relates to Property vested in the Custodian. The proposed amendments intends to clarify that enemy property shall continue to be enemy property irrespective of the fate of the enemy, enemy subject or enemy firm.

- (iv) Amendment proposed in Explanation to section 5(3) of the principal Act stipulating that for the purpose of this section, “enemy property vested in the Custodian” shall include and always deemed to have been included all rights, titles, and interest in, or any benefit arising out of, such property vested in him under the Act.
- (v) Amendment in section 5A of the principal Act pertaining to issue of Certificate by Custodian providing that the Custodian may, after making such inquiry as he deems necessary, by order, declare that the property of the enemy or the enemy subject or the enemy firm described in the order, vests in him under the Act and issue a certificate to this effect and such certificate shall be the evidence of the facts stated therein. The proposed amendment intends to have a valid proof of vesting of a property as an enemy property in the Custodian.
- (vi) Insertion of new provision in section 5B of the Principal Act pertaining to Bar of Law of succession providing that law relating to succession or any custom or usage governing succession of property shall NOT apply in relation to the enemy property under this Act. The purpose of the proposed amendment is to clarify that an enemy property does not get inherited by the legal heir under any law of succession after the death of the enemy or enemy subject.
- (vii) Insertion of new provision as explanation to section 5 of the Principal Act explaining that “Custom” and “usage” signify any rule which, having been continuously and uniformly observed for a long time, has obtained the force of law in the matters of succession of property.
- (viii) Insertion of new provision to section 6 of the principal Act pertaining to Prohibition to transfer any property vested in the Custodian, intends to clarify that there cannot be transfer of any property vested in the Custodian by an enemy or enemy subject or enemy firm.
- (ix) Amendment in section 8 (1) of the Principal Act pertaining to Powers of Custodian stipulates that with respect to the property vested in the Custodian under this Act, the Custodian may take or authorize the taking of such measures as he considers necessary or expedient for preserving such property till it is disposed of in accordance with the provisions of this Act. The proposed amendment intends to enable the Custodian to preserve the enemy property till it is disposed and to fix the rent of a property, to evict unauthorised occupants and remove illegal constructions.
- (x) The proposed amendment in section 8 (2) of the principal Act pertaining to Powers of Custodian provides to fix and collect the rent, standard rent, lease rent, licence fee or usage charges, as the case may be, in respect of enemy property and to secure vacant possession of the enemy property by evicting from the unauthorised or illegal occupant or trespasser and remove unauthorised or illegal constructions, if any.
- (xi) Insertion of new provision to section 8A of the principal Act pertaining to disposal of enemy properties stipulates the procedure given for disposal of enemy properties by the Custodian with the prior approval of Central Government.
- (xii) The proposed amendment in section 10A of the Principal Act, pertains to issue of sale certificate and stipulates that (I) where the Custodian proposes to sell any enemy immovable property vested in him to any person, he may on receipt of the sale proceeds of such property, issue a certificate of sale in favour of such person and such certificate of sale shall be valid instrument in the form of certificate of sale of an enemy property and such certificate suffice for registration, mutation etc.
- (xiii) The proposed amendment in section 11(3) of the principal Act, pertains to power to summon, which intends to strengthen the Custodian with quasi-judicial powers.

- (xiv) The proposed amendment in section 17 of the principal Act, pertains to Levy of fees, which stipulates that for the words “two per centum”, at both the places where they occur, the words “five per centum” shall be substituted.
- (xv) The proposed amendment in section 18 of the principal Act, pertains to transfer of property vested in Custodian in certain cases, which stipulates that Central Government may, on finding a property vested in the Custodian NOT to be an enemy property, it may direct the Custodian that such property may be transferred to the person from whom it has been acquired.
- (xvi) The proposed amendment in section 18A of the principal Act, pertains to Income not liable to be returned, which stipulates that any income received in respect of the enemy property by the Custodian shall not, notwithstanding that such property had been divested or transferred to any other person, be returned or liable to be returned to such person or any other person and deletes the words “unless so directed by order, by the Central Government” from the section 18A of the principal Act.
- (xvii) The proposed amendment in Section 18B of the Principal Act, pertains to bar of jurisdiction of courts and stipulates that no civil court or other authority shall entertain any suit or other proceeding in respect of any property, subject matter of this Act or any action taken by the Central Government or the Custodian. However, changes made for exclusion of civil courts does not bar the right to move the High Courts and Supreme Court under the right of Writ for any matter pertaining to enemy property. That is to say, an individual can always go to High Court(s) under Article 226 or the Supreme Court under articles 32 and 136.
- (xviii) The proposed amendment in section 20 of the Principal Act, pertaining to Penalty, substitutes the words “five hundred rupees”, with the words “ten thousand rupees” intending to increase the amount of fine from five hundred rupees to ten thousand rupees.
- (xix) Insertion of new provision to section 22 of the principal Act pertaining to effect of laws inconsistent with the Act which stipulates that the Enemy Property Act to have effect even if some other law including the law of the succession has provisions inconsistent with the provisions of this Act.
- (xx) Insertion of new provision to section 22A (1) of the principal Act pertaining to Validation, stipulates that for re-vesting of all enemy property in the Custodian with retrospective effect even if there exist any decree or order of any court or tribunal or other authority.
- (xxi) Proposed amendment in section 23 of the principal Act pertains to removal of difficulty proposing that the Central Government to have the power to remove difficulties during the period from the date on which Ordinance, 2010 lapsed to the date on which Ordinance, 2016 comes into effect.
- (xxii) The proposed amendment pertaining to repeal and savings stipulates that any action taken under Ordinance, 2010 shall be valid even if the said Ordinance has lapsed.
- (xxiii) To amend in section 2 (e) (4) of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 pertaining to definition of Public premises stipulating that premises of Enemy Property is proposed to be included in the definition of the Public premises.
- (xxiv) Proposed amendment in proviso of section 3 of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 stipulates that the Custodian, Deputy Custodian and Assistant Custodian of Enemy Property appointed under the Enemy Property Act, 1968 as Estate Officer in respect of the enemy properties and empowering them to have the powers of Estates officers.

CHAPTER-II

PRESENTATION OF THE MINISTRY OF HOME AFFAIRS**2.1 Presentation of the Joint Secretary**

2.1.1 The Select Committee in its meeting held on the 28th March, 2016, heard the presentation of the representatives of the Ministry of Home Affairs on the Enemy Property (Amendment and Validation) Bill, 2016. The Committee in its sitting held on the 4th April, 2016 heard the Home Secretary on the Bill. The representatives of the Ministry of Law and Justice (Department of Legal Affairs and Legislative Department) attended the meetings to clarify the legal and legislative queries of the Members.

2.1.2 In the meeting of the Committee held on the 28th March, 2016 the representatives of Ministry of Home Affairs, gave historical account of vesting of enemy property to a Custodian meant for the purpose by stating that since the ancient time during and after any war, in occupied territories, there were some cases in which civilian property was left behind or taken by the occupying State. Such property was considered as war loot which was the legal right of the winner. In modern times such type of action is considered a war crime and to avoid this war crime, the role of Custodian of Enemy Property was created. Accordingly, after the war, all unclaimed property and land that belonged to the enemy state/ nationals or refugees moved to the ownership of this Custodian. After the outbreak of World War-II in 1939, Defence of India Act, 1939 and the Defence of India Rules, 1939 made thereunder, Office of the Custodian of Enemy Property for India, Mumbai (then known as Controller of Enemy Firms), was constituted to prevent the payment of money to the enemy firm and to administer the enemy properties in India till the peace in contemplation, was restored. Properties left by the enemy, enemy subjects and enemy firms were vested in the Custodian. These properties continued to remain vested in the Custodian even after the cessation of World War-II.

2.1.3 The Select Committee was apprised that in the aftermath of the Chinese aggression in 1962, Emergency was proclaimed on 26th October, 1962 which continued till 10th January, 1968. Immovable properties, cash balance and firms belonging to or held by or manage on behalf of the Chinese nationals in India were vested in the Custodian of Enemy Property for India under the Defence of India Rules, 1962. Similarly, in the wake of Indo-Pak conflict in 1965, notifications dated 10th and 11th September, 1965 were issued to vest all immovable and moveable properties of all Pakistani nationals/companies in the Custodian of Enemy Property for India. The Committee was further informed that the Enemy Property Ordinance was promulgated by the President on 6th July, 1968 and the Enemy Property Act, 1968 replacing the Ordinance was enacted on 20th August, 1968. In the aftermath of the aggression by Pakistan in 1971, emergency was proclaimed on 3rd December, 1971 and remained in force till 26th September, 1977. Immovable and some specified movable properties of Pakistani nationals/companies in India got vested in the Custodian of Enemy Property under the Defence of India Act, 1971 and the rules made thereunder. Accordingly, the crucial vesting period for vesting the properties of Pak nationals/companies was determined from 10th September, 1965 to 26th September, 1977. The Committee was also informed that under the Defence of India Act, 1962, "Enemy" means any person or country committing external aggression against India; any person belonging to a country committing such aggression; such other country as may be declared by the Central Government to be assisting the country committing such aggression; any person belonging to such other country.

2.1.4 The representative of the Ministry of Home Affairs also drew the attention of the Committee to Clause VIII of the Tashkent Declaration of 1966, which states that—'the Prime Minister of India and the President of Pakistan have agreed that the both sides will continue the discussion of questions relating to the problems of refugees and evictions/illegal immigrations. They also agreed that both sides will create conditions which will prevent the

exodus of people. They further agreed to discuss the return of the property and assets taken over by either side in connection with the conflict'. He, however, stated that the Ministry of External Affairs has confirmed that the Government of Pakistan has disposed of all the enemy properties. On the other hand, the enemy properties in India still continue to vest in the Custodian of Enemy Property for India.

2.1.5 Dwelling upon the efforts made in the year 2010 to amend the Enemy Property Act, 1968, the Committee was informed that the Enemy Property (Amendment and Validation) Ordinance, 2010 was promulgated on 2nd July, 2010 and the Enemy Property (Amendment and Validation) Bill, 2010 was introduced on 2nd August, 2010 to replace the Ordinance. The Ordinance however lapsed on 6th September, 2010. The Bill was also withdrawn on 15th November, 2010 and another Bill namely the Enemy Property (Amendment and Validation) Second Bill, 2010 was introduced in the Lok Sabha the same day. The Statement of Objects and Reasons of the Bill *inter alia*, stated "there have been a number of judgments by various courts that have adversely affected the powers of the Custodian and the Government of India as provided under the Enemy Property Act, 1968. In view of such interpretation by the courts, the Custodian has been finding it difficult to sustain his actions under the Enemy Property Act, 1968. In the above circumstances, it had become necessary to amend the Enemy Property Act, 1968, with retrospective effect to, *inter alia*, clarify the legislative intention." The Second Bill was referred to the Parliamentary Standing Committee on Home Affairs.

2.1.6 The representative of Ministry of Home Affairs stated that the Department-related Parliamentary Standing Committee on Home Affairs in its report on the Bill observed that in the Second Bill, certain major changes made were contrary to the aims and objectives of the first Bill and the Ordinance. The Standing Committee could not get a convincing reply as to what happened after the Ordinance lapsed and before the Second Bill was brought. The reasons for bringing revised Second Bill were also not suitably replied. The Standing Committee had also noted the opinion of Shri Ram Jethmalani that—'an heir can only get what the propositus had. When a person is dead, his heir gets what he owned. Even if he is Indian citizen and heir of his father, he gets what his father had, but if the father did not have the property, the property belonged to Indian nation, heir gets zero'. The Standing Committee had strongly felt that enemy properties worth crores of rupees should not go in the hands of those, who do not have any legitimate claim over those enemy properties.

2.1.7 He further stated that the Standing Committee on Home Affairs after detailed examination of the Bill had recommended that a fresh Bill may be brought forward before the Parliament incorporating the views and observations of the committee. It had also recommended that time bound action plan may be drawn and entire process of identification of enemy properties and disposal thereof may be completed within a stipulated time. It has further recommended that, the staff position of the Custodian office may also be strengthened. In response to the observations/recommendations made by the Standing Committee on Home Affairs, Government in its action taken on the report of the Committee had stated that the present Bill is similar to the Ordinance of 2010 and the First Bill of 2010. The weak provisions of the Second Bill, 2010 have been removed. The staff position of the Office of the Custodian of Enemy Property for India has improved and Government is working on the disposal of enemy properties. One such property at Bandra, Mumbai has been given to CRPF recently.

2.1.8 The Select Committee was further informed that at present total number of immovable enemy properties belonging to Pakistani nationals are 9,280 comprising of 11,882 acres. The value of the total vested immovable properties stands to the tune of Rs. 1,04,340 crores. Movable vested properties consist of shares in 266 listed companies having valuation of Rs. 2,610 crore; shares in 318 unlisted companies with a value of Rs. 24 crores; Gold and Jewellery with a value of Rs. 0.38 crores; bank balance of Rs. 177.60 crores; Investment in Government securities of Rs. 150 crores and Investment in Fixed Deposits of Rs. 160.58 crore. Besides this, there are 149 immovable enemy properties of Chinese nationals vested in the

Custodian, spread over in States of West Bengal, Assam, Meghalaya, Tamil Nadu, Madhya Pradesh, Rajasthan, Karnataka and Delhi.

2.1.9 Responding to the query of a Member of the Select Committee regarding the procedure for identification, declaration, preservation, management and control over the enemy properties the representative of the Ministry of Home Affairs stated that the whole process/activities are catagorized into following four stages:

- (a) Process case is the identification stage where Immovable properties which have been detected/ identified but are yet to be declared as enemy properties after thorough investigation.
- (b) Declared case is the declaration stage where Immovable properties vested in the Custodian of Enemy Property for India (CEPI), which have been declared as enemy property. Authorization in respect of which is issued to the District Revenue Officials for its better/proper preservation and management. No income is generated out of these properties.
- (c) Income Case is the stage of preservation, management and control over the enemy properties. Properties declared as enemy property gets vested in the Custodian of Enemy Property for India (CEPI) by virtue of issue of a vesting certificate, the authorization in respect of which is issued to the District Revenue Officials for its better/proper preservation and management and from which income has been/is being received from district authorities from time to time.
- (d) Court Cases is the stage of preservation, management and control over the enemy properties. At any of the three above mentioned stages, a court case may be involved and pending.

2.2 Oral evidence of Home Secretary

2.2.1 The Committee heard the Home Secretary on 4th April, 2016 on the Bill. Giving a historical background, he stated that the British had enacted a Defence of India Act in 1939. There were rules under that Act and a number of countries had been declared as 'enemy countries' therein. For Britain the enemies were naturally, Germany, Italy and Japan, the so-called axis countries and they were declared as 'enemies'. When the British departed and India gained Independence, the Act was abrogated because Japan and Germany were no longer our enemies. But another Act was enacted by the Parliament at that time called the 'Enemy Property (Continuation of Emergency Provisions) Act, 1947'. According to which, in Emergency rules could be enacted to impound or vest the enemy property in yourselves, he stated. When the war with China began, in 1962, the rules were made to vest the Chinese properties in the custodian of enemy property. In 1965, under the same rules, the enemy properties of Pakistan were vested in the State. However, the Emergency declared in 1962 after the Chinese aggression came to an end in 1968. In 1968, the Enemy Property Act, 1968 was enacted. In the meantime, the Tashkent Agreement was signed between the then Prime Minister of India, Shri Lal Bahadur Shastri, and the then President of Pakistan. At that time, it was decided that there would be a further discussion on return of enemy properties. But that discussion never took place. Instead, in 1971, again, there was a war. In 1971-72, under the Defence of India Rules, the properties of Pakistan were impounded. Since the Emergency declared in 1971 remained in force till 26th September, 1977, the 1968 Act was amended to include all the properties vested in the custodian up to 26th September, 1977.

2.2.2 Clarifying the difference between the enemy property and the evacuee property, the Home Secretary stated that the Evacuee property is something that happened as a consequence of partition. It was not a war as such. These properties belonged to the people who migrated to Pakistan. Their properties were left behind and the cut-off date set by the Evacuee Property law was 7th May, 1954. The Act has since been repealed and whatever properties were in possession of the custodian of the evacuee property have been handed over to the States to dispose of as they wish. He stated that the enemy property and the evacuee property are two different things.

2.2.3 The Home Secretary further pointed out that the main issue had arisen because of the long litigation fought by the Raja of Mahmudabad in the Supreme Court and the orders given thereto.

2.2.4 Dwelling upon the operative and important portion of the judgment of the Supreme Court in the Raja Mahmudabad case, the Home Secretary stated that basically, the Supreme Court interpreted Sections 6, 8 and 18 of the Enemy Property Act and reached a conclusion that a conjoint reading of Sections 6, 8 and 18 of the Act indicates that the enemy subject due to the vesting of his property in custodian is not divested of his right, title and interest in the property. The vesting in the Custodian is limited to the extent of possession, management and control over the property temporarily. This position was not disputed before us by the learned counsel appearing for the appellant, he stated. The object of the Enemy Property Act is to prevent a subject of an enemy state from carrying on business and trading in the property situated in India. It is, therefore, contemplated that temporary vesting of the property takes place in the Custodian so that the property till such time, as it is enemy property, cannot be used for such purpose. The Home Secretary further stated that in Government's opinion, the Supreme Court was perhaps technically right but it also erred in not realising the fact that the circumstances which existed in India and Pakistan were quite different from the circumstances which existed in Europe in World War-I and World War-II because really speaking, this was the mirror action that both countries took and the properties which vested in Pakistan have been disposed of by them. While we have not been able to dispose of these properties.

2.2.5 Replying to a Member's query regarding depriving the citizens right even for a limited purpose in respect of enemy property, the Home Secretary stated that no right ever existed for the successor over enemy property even if he is an Indian citizen. The properties never belonged to the father. They, stood vested in the Custodian.

2.3 Comments of the Ministry on the issues raised by Members

2.3.1 During the course of the oral evidence of Home Secretary and other officers of the Home Ministry and Law Ministry, Members raised several issues. The issues raised and the response/comments of the Ministry of Home Affairs thereon are given under:

Issue Raised

2.4 Whether all Enemy Properties in the country have been identified by the Government of India; if not so, the reasons there for.

Response of the Ministry

2.4.1 Most of the properties have been identified and declared as enemy property. However, it is a continuous process. As and when information is received, inquiry is initiated as per procedure for its acceptance/rejection as enemy property.

Issue Raised

2.5 The mechanism to identify and classify the Enemy Property and the safeguards taken to ensure minimum dispute regarding classification of property as Enemy property.

Response of the Ministry

2.5.1 The procedure followed for identification of immovable property is as under:

- (i) The Custodian may seek assistance of the District authority for examination of the Tehsil-wise or Block-wise revenue records for the purposes of identifying any immovable property belonging to or held in the name of an enemy.
- (ii) The concerned District authority shall, on identifying any immovable property belonging to or held in the name of an enemy, forward to the Custodian the complete details of such enemy property including the nationality of the owner thereof.

- (iii) If the District authority receives any information or complaint from any person or from any source in respect of an enemy property, he shall forward such information or complaint to the Custodian along with details.
- (iv) The Custodian may direct the District authority in which the enemy property is located, to carry out physical inspection or verification of the enemy property for obtaining the information as specified by the Custodian.
- (v) On receipt of the direction from the Custodian, the District authority shall check the relevant revenue or municipal or police records to verify the location or area and other details of the enemy property and conduct survey for obtaining the information as specified by the Custodian.
- (vi) On obtaining the required information and on being satisfied that the property or interest therein is *prima-facie* enemy property, the Custodian or his authorized representative shall cause a notice to be served on the person claiming title to such property or interest and on any other person or persons whom he considers to be interested in the property.
- (vii) The notice mentions the grounds on which the property is sought to be declared as an enemy property and shall specify the provisions of the Act under which such property is alleged to be an enemy property.
- (viii) (a) The notice shall be served personally to the person concerned or his manager, or to other members of his family; or be sent through registered post; or affix it on some conspicuous part of the premises concerned or at the last known place of the business of the person concerned.
(b) The Dasti service of notice through police may be resorted only in the case of persistent non-compliance of the notice.
- (ix) The Custodian or his authorized representative shall observe the principles of natural justice by giving sufficient opportunity to the noticee(s) to present their case before them and hear them or their representative.
- (x) Where a notice has been duly served, the party shall be called upon to show cause as to why the subject property should be declared as an enemy property:
It is also provided that if the party fails to appear on the dates fixed for hearing even after giving reasonable opportunity, the Custodian or his authorized representative may proceed further to hear the matter *ex-parte* and pass a reasonable order on the material before them as the Custodian or his authorized representative deem fit.
- (xi) Where the party appears and contests the notice, the Custodian or his authorized representative shall state the reasons to be recorded in writing, as to why the subject property should not be deemed to be an enemy property.
- (xii) Any other person or persons claiming to be interested in the proceedings relating to enemy property, may file an application before the Custodian who shall then, either on the same day or on any subsequent day to which the hearing may be adjourned, proceed further to hear the applicant himself or cause the same to be heard by his authorized representative.
- (xiii) The authorized representative of the Custodian shall prepare a detailed report of all cases identified as enemy property in respect of which hearing is complete, and shall submit the same to the Custodian along with his recommendations thereon.
- (xiv) All properties under examination and in the process of identification or verification shall be considered as Process Case and details of such cases shall be recorded till its declaration.

2.5.2 The procedure followed for declaration of immovable property is as under:

- (i) On receipt of the report of the authorized representative, the Custodian shall examine and cause further investigation, if considered necessary.
- (ii) If, on examination of the report or on further investigation, the Custodian is satisfied that the property is an enemy property, he shall issue a certificate, declaring the property as enemy property and vesting of such property in the Custodian, along with an authorization order, authorizing the District authority to take over the said property immediately on his behalf.
- (iii) On receipt of the authorization order from the Custodian, the District authority shall proceed further to take control over the management of the enemy property and shall initiate action for recovery of arrears or dues recoverable from the occupier of the vested property and a notice shall be affixed over the property declaring the said property as vested with the Custodian.
- (iv) The District authority shall prepare a list of the vested property pertaining to his district and a copy of the same shall be sent to the Custodian.

Issue Raised

2.6 Whether Government has adequate manpower for presentation and management of the Enemy Properties, if not, the steps taken to rectify the situation in this regard.

Response of the Ministry

2.6.1 The Government has adequate manpower for preservation and management of the Enemy Properties. In the last 2 years 108 Surveyors and Supervisors have been appointed exclusively for this purpose.

Issue Raised

2.7 The number of properties which were declared as Enemy Properties but were later returned to the claimants under different circumstances.

Response of the Ministry

2.7.1 No enemy property has been returned till date.

Issue Raised

2.8 The different nature of Enemy Properties under custodian of Enemy Property of India *i.e* building, orchard, water bodies, monuments etc.

Response of the Ministry

2.8.1 Broadly, the nature of enemy properties under the Custodian *inter alia* includes (i) Lands; (ii) Buildings; (iii) Orchards (iv) Water bodies (v) Movable properties.

Issue Raised

2.9 Whether the Custodian of Enemy Property has finally disposed some of the Enemy properties, if so, the details thereof. The reasons for keeping the Enemy Property under the custodian and incurring expenses on their preservation when Pakistan has disposed of all such properties in violation of the Tashkent Declaration.

Response of the Ministry

2.9.1 Government has now initiated steps for giving the enemy properties in public interest. 31 such properties have been given to the CAPFs (CRPF, CISF, NSG etc.) for use in public interest.

Issue Raised

2.10 By when the whole exercise of settling the Enemy Properties will be completed.

Response of the Ministry

2.10.1 Government is trying to settle the matter of enemy properties at the earliest possible. Since these properties are spread throughout the country and there are several litigations also, it is difficult to give an exact time-frame. However, passing the Enemy Property (Amendment and Validation) Bill, 2016 shall greatly strengthen the Government's hands in this regard.

Issue Raised

2.11 Whether Enemy Property Act affects, in any manner, the Indo-Bangladesh Land Boundary Agreement.

Response of the Ministry

2.11.1 The Enemy Property Act does not, in any manner, affect the Indo-Bangladesh Land Boundary Agreement.

Issue Raised

2.12 Reasons for a sharp rise in the number of Enemy Properties during last five years.

Response of the Ministry

2.12.1 Earlier, the property of one person at one place was regarded as one property. But, while doing work at the ground level it was felt necessary that a property which includes more than one plot must be calculated plot-wise, otherwise it would not be possible to understand the real scenario. Thus, the holdings were divided into plots. One holding can have several numbers of plots. Though there are certain new identifications too, but the sharp rise was mainly because of the above mentioned reason.

Issue Raised

2.13 The reasons for withholding the income, by the Custodian, from Enemy Properties even if such properties are returned to their right owners.

Response of the Ministry

2.13.1 First of all any enemy property once vested in the Custodian shall be preserved by him till it is disposed in accordance with the Act, thus the question of return of properties arise only when the property is wrongly vested. The income is not liable to be returned because when such a property is vested with the Custodian as enemy property, the expenditure incurred and the preservation and management for the property is done by the Custodian. Till date, no such case of return has come up.

Issue Raised

2.14 Whether inclusion of Indian citizens in the definition of Enemy subject deprives them of their Right to Property and Right to Inheritance.

Response of the Ministry

2.14.1 The Ministry of Home Affairs replied in the negative and pointed out that Explanation 2 to clause (b) of section 2 of the Enemy Property Act, 1968 says that nothing contained in this Act shall affect any right of the legal heir and successor referred to in this clause (not being inconsistent to the provisions of this Act) which have been conferred upon him under any other law for the time being in force. Thus, inclusion of Indian citizens in the definition of enemy subject does not deprive them of their Right to Property and Right to Inheritance. The inclusion is only there in relation to enemy property that enemy property cannot be succeeded to. No other property rights or inheritance rights are affected by this.

Issue Raised

2.15 The reasons for barring the jurisdiction of Civil Courts under the Enemy Property Act.

Response of the Ministry

2.15.1 No civil court or other authority shall entertain any suit or other proceeding in respect of any property, subject matter of this Act or any action taken by the Central Government or the Custodian. The right of judicial review is not barred by this provision. An individual can always go to High Court(s) under article 226 or the Supreme Court under articles 32 and 136. This provision has many precedents. There are a number of Central and state Acts which has this provision, such as, the Income Tax Act, etc.

2.15.2 The civil courts *i.e.* the district courts are barred so that no one can go for suits in respect of matters pertaining to enemy property because such suits take long periods to be adjudicated and keep going on for years together.

2.15.3 Thus, barring the jurisdiction of the civil courts does not take away the rights of a citizen of an individual to move for a writ to the High Courts and Supreme Court.

Issue Raised

2.16 The reasons for elaborating the definition of 'enemy subject' and including therein the citizens of India.

Response of the Ministry

2.16.1 Section 2(b) is a definitional clause and clarifies that for the purpose of enemy property, definition of enemy includes its legal heir and successor irrespective of the nationality of the legal heir and successor.

Issue Raised

2.17 The reasons for enhancing the powers of the Custodian to declare a property as an Enemy Property.

Response of the Ministry

2.17.1 The powers of the Custodian are not enhanced. Under the proposed law, the Custodian issues a vesting certificate, which is the evidence of the vesting of that property in the Custodian. It is a procedural and routine work. The procedure to identify and declare a property as enemy property and to vest it in the Custodian, there is a procedure.

Issue Raised

2.18 The relationship between the proposed amendment in section 2(b) and the proposed section 5B in the Bill may be explained.

Response of the Ministry

2.18.1 Section 2(b) is a definitional clause and clarifies that for the purpose of enemy property, definition of enemy includes its legal heir and successor irrespective of the nationality of the legal heir and successor. Whereas section 5B clarifies that with respect to enemy property matters, the law of succession does not apply.

Issue Raised

2.19 The steps Government intends to take to ensure that the amendments proposed to the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 do not put the PSUs, Banks and Insurance Companies etc. functioning from such enemy properties in Mumbai and other metro cities under stress.

Response of the Ministry

2.19.1 The above amendments are brought in for eviction of unauthorized occupants. The authorized tenants with valid rent receipts do not fall under the category of illegal occupants. Thus, the Banks and PSUs (which pay rent regularly to the Custodian) with valid rent receipts shall not fall under this purview.

Issue Raised

2.20 Reasons for extending the Crucial Vesting Period upto 26th September, 1977.

Response of the Ministry

2.20.1 Consequent on Indo-Pak Conflict of 1965, notifications dated 10.09.1965 and 11.09.1965 were issued to vest all immovable and moveable properties of all Pakistani Nationals/ Companies in the Custodian of Enemy Property for India. Consequent on aggression by Pakistan in 1971, emergency was proclaimed on 3rd December, 1971 and remained in force till 26.09.1977. Accordingly, the crucial vesting period for vesting the properties of Pak National/ Companies was determined from 10.09.1965 (date of notification) to 26.09.1977 (date of end of emergency).

2.20.2 The Ministry of Home Affairs further added that movement of people continues to take place even after the occurrence of a particular event. *e.g.* in Evacuee Property Act also, where the properties of people who left India following partition of 1947 continued to vest till 1954.

Issue Raised

2.21 Date on which the valuation of shares of 266 listed companies amounting to Rs. 2,610 crore was done.

Response of the Ministry

2.21.1 The valuation is as on 31.03.2015

Issue Raised

2.22 Whether Pakistani National whose property has been designated as Enemy Property in India can obtain a citizenship of India and get back his property vested in the CEPI.

Response of the Ministry

2.22.1 A property which is in the name of an enemy national (irrespective of nationality) at the crucial vesting period shall be vested as an enemy property in the Custodian. This property cannot be returned to the enemy or his legal heirs in any possible circumstances. The principal Act's intention was also to have continuous vesting in the Custodian. Thus, a Pakistani national whose property has been designated as Enemy Property in India, even if obtains a citizenship of India cannot get back his property vested in the Custodian.

Issue Raised

2.23 Whether the wife and children of an enemy subject, who chose to remain in the country would have any right on the property of the enemy, if not, the reasons therefor.

Response of the Ministry

2.23.1 As per the Enemy Property (Amendment and Validation) Ordinance, 2016 the legal heirs cannot succeed to the property once vested as enemy property. The law of succession is barred in respect to enemy properties. Thus, when a person becomes an enemy subject and the property was in his name at the crucial vesting period it gets vested irrespective of whether he has any legal heir as Indian citizens or not.

Issue Raised

2.24 Whether in view of bar of jurisdiction of Civil Courts in matter of Enemy Property any prehearing mechanism has been put in place to resolve the grievance of the person whose property has been vested in the Custodian.

Response of the Ministry

2.24.1 At the process stage, before the vesting of a property in the Custodian a sufficient and elaborate process is followed giving ample opportunity to everyone interested before taking a final decision.

Issue Raised

2.25 The reasons for delay in verification and disposing of Enemy Property along with the winding up of the Office of CEPI, as observed in the Report of Standing Committee on Home Affairs on the Second Bill of 2010.

Response of the Ministry

2.25.1 The recruitment of the surveyors have been done only in the year 2014 and work of identification is under process. The passing of the Enemy Property (Amendment and Validation) Bill, 2016 shall greatly strengthen the Government's hands in this regard.

Issue Raised

2.26 Position in Pakistan in relation to administration and management of enemy property after signing of Tashkent Agreement.

Response of the Ministry

2.26.1 The Ministry of External Affairs has confirmed that Pakistan has already disposed of the enemy property.

Issue Raised

2.27 Implication of proposed Retrospective Effect Clause in the Enemy Property (Amendment and Validation) Bill, 2016 on the manner of disposal, management and administration of enemy property *viz-a-viz* claim of stakeholders and powers of Custodian of Enemy Property for India (CEPI) and Central Government.

Response of the MHA

2.27.1 Amendment in respect of disposal is not given retrospective effect. For management and administration of enemy property retrospective effect is given as the enemy properties are matter related to the Indo-Pak war of 1965 and 1971.

Response of the Department of Legal Affairs

2.27.2 The Union Parliament and State Legislatures have plenary powers of legislation within the fields assigned to them and subject to certain constitutional and judicially recognized restrictions; can legislate prospectively as well as retrospectively. If the intention of the legislature is clearly expressed that it purports to introduce the legislation or to amend an existing legislation retrospectively, then subject to the legislative competence and the exercise being not in violation of any of the provisions of the Constitution, such power cannot be questioned.

2.27.3 The Department of Legal Affairs further added that the aforesaid principle has been upheld by the Apex Court in numerous cases. Some of the judgments upholding the same are:

- (a) Bhubaneshwar Singh v. Union of India, (1994) 6SCC 77.
- (b) Bakhtawar Trust v. M.D. Narayan, (2003) 5SCC 298.
- (c) Tika Ram v. State of U.P. (2009) 10 SCC 689.
- (d) State of Bihar v. Bihar Pensioners Samaj, (2006) 5 SCC 65.
- (e) Virender Singh Hooda v. State of Haryana, (2004) 12 SCC 588

2.27.4 The incorporation of this clause will give a retrospective effect to the amendments from the date of commencement of the Principal Act. It will have the effect, amongst others, of making the enemy property to continue to retain character of enemy property and continued vesting of all such properties of the enemy, enemy subject and enemy firm in the Custodian, notwithstanding that such enemy has ceased to be enemy due to death, extinction, winding up of business or change of nationality or that the legal heir and successor is a citizen of

India. The law of succession or any customs or usage shall not apply to any enemy property and no person shall be deemed to have any right, title, interest in such enemy property. Powers of custodian have been enlarged to include the power to dispose of property, whether by sale or otherwise, with prior approval of Central Government. The Central Government has been empowered to issue binding directions to the custodian with regard to disposal of enemy property, can direct disposal of enemy property by any other authority or Ministry or Department instead of the Custodian and may deal with or utilize the enemy property in such manner as it deem fit.

2.27.5 Any enemy property divested from Custodian to any person under the provisions of the Act, as it stood immediately before the commencement of the Enemy Property (Amendment and Validation) Act, 2016 shall stand transferred to and vest or continue to vest in the Custodian in the same manner as it was vested in the Custodian before such divesting of enemy property under the provisions of this Act. The Bill bars the maintenance or continuation of any suit or other proceedings in any court or tribunal or authority for the enforcement of any decree or order or direction given by such court or tribunal or authority directing divestment of enemy property from the Custodian vested in him under section 5 of the Act, as it stood before the commencement of the Enemy Property (Amendment and Validation) Act, 2016. Any transfer of any enemy property by virtue of any order of attachment, seizure or sale in execution of decree of a civil court or orders of any tribunal or other authority in respect of enemy property vested in the Custodian, contrary to the provisions of the Act, as amended by the Enemy Property (Amendment and Validation) Act, 2016 has been declared to be void and such property is to continue to vest in the Custodian.

2.27.6 Some of the legislations, which have been given retrospective effect and have been upheld by the Apex Court in the aforesaid judgments are Coal Mines Nationalization Laws (Amendment) Ordinance and Act, 1986, Bihar State Government, Employees' Revision of Pension, Family Pension and Death-cum-Retirement Gratuity (Validation and Enforcement) Act, 2001, Bangalore City Planning Area Zonal Regulations (Amendment and Validation) Act, 1996.

Response of the Legislative Department, Ministry of Law and Justice

2.27.7 On the issue of implication of proposed Retrospective Effect Clause in the Enemy Property (Amendment and Validation) Bill, 2016, the Ministry of Legislative Department, Ministry of Law and Justice stated that the power of Parliament and the State Legislature to make laws is conferred by articles 245, 246 and 248 of the Constitution. The power to make a law includes the power to give it with retrospective effect. The only express limitation imposed upon the power of retrospective legislation is that contained in clause (1) of article 20 of the Constitution, *viz.*, that it cannot make retrospective penal laws. There are several instances of legislations having retrospective effect as under:—

- (i) Section 9 of the Income-tax Act, 1961 was amended *vide* the Finance Act, 2010 with effect from first day of June, 1976.
- (ii) Section 292B of the Income-tax Act, 1961 was amended *vide* the Finance Act, 2007 with effect from the first day of October, 1975.
- (iii) Section 292C of the Income-tax Act, 1961 was amended *vide* the Finance Act, 2008 with effect from the first day of October, 1975.
- (iv) Section 2 of the Wealth Tax Act, 1957 was amended *vide* the Finance Act, 2007 with effect from the first day of June, 1994.
- (v) Section 27 of the Wealth Tax Act, 1957 was amended *vide* the Finance Act, 2010 with effect from the first day of June, 1981.
- (vi) The Depositories Act, 1996.
- (vii) The National Commission for Minority Educational Institutions Act, 2004.
- (viii) The Vice-President's Pension (Amendment) Act, 2008.

CHAPTER III

VIEWS OF STAKEHOLDERS/EXPERTS/REPRESENTATIVES OF SELECT STATES/ATTORNEY GENERAL FOR INDIA

3.1 The select Committee of Rajya Sabha on the Enemy Property (Amendment and Validation) Bill, 2016 in its meetings held on the 4th and 5th heard the views of some Stakeholders/Experts. The Committee in its next meeting held on 11th April 2016 took oral evidence of an expert, Chief Secretaries of Governments of NCT of Delhi, Telangana and representatives of Governments of Uttar Pradesh, Bihar, Kerala, Uttarakhand. However, the meeting remained inconclusive, therefore, the Committee in its sitting held on 19th April 2016 again heard the Chief Secretaries/representatives of various State Governments/UTs on the various provisions of the Bill. The Committee in its sitting held on 12th April 2016 heard the views of some experts and the Attorney General for India on the Bill.

3.2 Views of Shri Mohammad Amir Mohammad Khan, Stakeholder and his Companions
Views of Shri M.A.M. Khan and his assonates

- (i) This Bill, unlawfully and adversely, affects the rights of lakhs of Indian citizens, both Muslim and non-Muslims. In Bhopal alone, there are more than 10,000 families. There are a very large number of families in Noida. These families had built their houses, with their hard-earned money, on land that at one point of time in the past, belonged to the Enemy Property. But whether it is Bhopal or Noida or whether it is my own case, where people have bought property from me, their rights would be very deeply affected by what this Bill proposes to do.
- (ii) The number of properties in 2013 were over 2000, in 2014 it was 12,000 and in 2015 over 14,000. The properties are reaching somewhere around 16,000.
- (iii) It retrospectively affects the judgments of lower courts.
- (iv) Statement of Objects and Reasons of the Bill explains why certain provisions of this Bill may be unconstitutional and may be unfair to certain impacted persons, including Mr. Khan.
- (v) It has been the admitted position of the Government of India that the vesting under the Enemy Property Act is a certain temporary vesting for the purposes of preservation, management and custody of the Enemy Property.
- (vi) It has also been a consistent and admitted position that an enemy can never include an Indian citizen.
- (vii) And the third very important point is that it has been a settled and admitted position that the laws of succession will continue to apply and properties inherited by an Indian citizen will not be discriminately treated depending on where the properties were acquired from or whom the properties are required by.
- (viii) The moment property ceases to be owned by an enemy national by normal rules of succession, property is required to be and must be divested to that particular non-enemy national—in this case, an Indian citizen. The intent of this legislation is apparently to clarify and the word ‘clarify’ cannot be sustained in this Bill which will go through all amendments, including the very important amendment being retrospective in nature. Property vesting is only for the purpose of preservation, custody and management.
- (ix) A conjoined reading of sections 6, 8 and 18 of the Act indicates that the enemy subject, due to the vesting of his property in the Custodian, is not divested of his right, title and interest in the property. The vesting in the Custodian is limited to the extent of possession, management and control over the property temporarily. The objective of the Enemy Property Act is to prevent subject of an

enemy State from carrying on business and trading in property situated in India. It is, therefore, contemplated that temporary vesting of property takes place in the Custodian, so that the property, till such time, as it is enemy property, cannot be used for such purpose.'

3.3 Views of Shri V. K. Bhasin, Former Law Secretary to Government of India

3.3.1 Dwelling upon the legislative competence and the Constitutional validity of the Bill, the expert mentioned that the proposed amendment seeks to enforce the amended provisions with retrospective effect *i.e.*, with the enforcement of the date of principal act of 1968. The proposed amendments bring forth validation provision. In the *Indira Gandhi Vs. Raj Narain* case the retrospective effect of the law in the field of election has been upheld by Allahabad High Court. It is understood that retrospective operation of the law would cause hardship to some person or others, but there is no reason to deny to the Legislature the power to enact retrospective law in the case of a law which has the retrospective effect. The theory is that the law was actually in operation in the past and if the provisions of the Act are general in their operation, there can be no challenge to them on the ground of discrimination and unfairness merely because of their retrospective effect.

3.3.2 Further, putting forward his argument as regards validity of enacting a law with retrospective effect he stated that in the case of *Ujagar Prints Vs. Union of India* and others, it was held that if in the light of such validating and curative exercise made by the legislature—granting legislative competence—the earlier judgment becomes irrelevant and unenforceable, that cannot be called an impermissible legislative overruling of the judicial decision. All that the legislature does is to usher in a valid law with retrospective effect in the light of which the earlier judgment becomes irrelevant. Such legislative experience of validation of laws is of particular significance and utility and is quite often applied, in taxing statutes. No individual can acquire a vested right from a defect in a statute and seek a windfall from the legislature's mistakes. There are judgments and that are on retrospective validations and not giving any windfall to any other person. In *J.K. Jute Mills Co. Ltd. versus the State of Uttar Pradesh* (1961, AIR, Supreme Court, 1534), the judgement says that amending the law retrospectively is a sovereign power. It says, 'Such a power conferred on a Sovereign Legislature carries with it authority to enact a law, either prospectively or retrospectively, unless there can be found in the Constitution, itself, a limitation on that power.'

3.3.3 The Supreme Court in *Khayerbari Tea Co. Ltd. and others versus the State of Assam* upheld the passing of the validation laws. It says, 'It is not disputed that the power to make a law necessarily includes the power to make the provisions of the law retrospective. It is also not disputed that it is within the competence of a legislature to pass validating Acts, because the power to pass such validating Acts is essentially subsidiary to the main power.' Besides, such validating Acts can remove the infirmity in the existing law. He was of the opinion that by virtue of this infirmity in the law, no person can be allowed to have a windfall.

3.3.4 On the question as to whether the enemy property continues to be the enemy property or not, the expert drew the attention of Committee to the Enemy Property Act, Defence of India Rules, 1962 and Defence of India Rules, 1971. He referred Section 2 (c) of Enemy Property Act, 1968, which says, 'Enemy property means any property for the time being belonging to or held or managed on behalf of an enemy, an enemy subject or an enemy firm: Provided that where an individual enemy subject dies in the territories to which this Act extends, any property which immediately before his death, belonged to or was held by him or was managed on his behalf, may, notwithstanding his death, continue to be regarded as enemy property for the purposes of this Act.' That is to say even if the enemy dies, his property will remain enemy property and there would not be change in the status. He further drew the Committee's attention to Rule 133-I of Defence of India (Amendment) Rules, 1962, which, says, that 'enemy property means any property for the time being belonging to or held or managed on behalf of an enemy, as defined in Rule 133-A, an enemy subject or an enemy firm: Provided that where an individual enemy subject dies in India, any property which immediately before his death, belonged to or was held by him or was managed on his

behalf, may, notwithstanding his death, continue to be regarded as enemy property for the purposes of Rule 133-V.’ Further, Sub-rule 4 of Rule 138 of Defence of India Rules, 1971 defines enemy property as under:—

“enemy property means any property for the time being belonging to or held or managed on behalf of an enemy, as defined in Rule 130, an enemy subject or any enemy firm: Provided that where an individual enemy subject dies in India, any property which immediately before his death, belong to or was held by him or was managed on his behalf, may, notwithstanding his death, continue to be regarded as enemy property for the purpose of Rule 151.”

3.3.5 In all the three Acts/rules of 1962, 1968 and 1971 there is no provision for change in the status/colour of enemy property, therefore, enemy property will remain enemy property.

3.3.6 On the issue whether anybody can pass a better title than what he possesses the expert stated that it is a settled principle that nobody can transfer a better title than what he possesses. Here, he drew the attention of the Committee to Sections 4, 5, 6 and 7 of the Transfer of Property Act and Section 23 of the Indian Contract Act. There are legal rules *Nemo dat quod non habet* and *Nemo plus iuris ad alium transferre potest, quam ipse habet*, which postulate that where the properties are sold by a person who is not their owner, and does not sell them under the authority or with the consent of real owner, the buyer acquires no title to the property than the seller had it. The Indian law recognises this principle in various provisions of various statutes, which, in pith and substance, deals with effects of the contract with regards to transfer of property.

3.3.7 The expert also drew the attention of the Committee to Sections 4, 5, 6, 7 of the Transfer of Property Act and Section 23 of the Indian Contract Act. Section 23 of the India Contract Act says, ‘What consideration and objects are lawful, and what not. The consideration or object of an agreement is lawful, unless it is forbidden by law; or is of such a nature that, if permitted, it would defeat the provisions of any law; or is fraudulent; or involves or implies, injury to the person or property of another; or the Court regards it as immoral, or opposed to public policy. In each of these cases, the consideration or object of an agreement is said to be unlawful. Every agreement of which the object or consideration is unlawful is void.’ That is to say the enemy property can neither be sold to any body nor be inherited by any successor as such. Because enemy property which belonged to the person, neither had the custody nor the clear title. He questioned that when he could neither sell nor transfer it, how could it be given to his successor?

3.3.8 Shri Bhasin pointed out that enemy property has two parts consisting of two words, namely, ‘enemy’ and ‘property’. The word ‘Enemy’ has been defined as per the Defence rules of 1962 and 1971 wherein citizenship has not been defined but the proposed amendment “includes citizens of India” leading to confusion. The second part is property but the right to property under Article 300(a) is not a Fundamental Right under the Constitution however only a constitutional legal right. That is to say “That any person can be deprived of the property by the process of law.” He added that ‘property’ under Article 300A is not a basic feature of the Constitution. In the *Jillu Bhai Nanu Bhai Khachhar Vs. State of Gujarat*, AIR 1995, SC-142 case the court held that 300A is not a basic structure of the Constitution and Article 20 does not apply to the right to property.

3.3.9 On the issue as to whether classification of citizenship is valid, he stated that the Indian citizens who have been denied by the proposed amendments, the right of succession of Enemy Property, it has been specially proposed in the Bill that the right of affected citizens only relates to succession of Enemy Property while the rest of the rights remains unaffected. In the Income tax laws classification of citizenship already exists as rates for income tax for the citizen with the ages of 65 years, 75 years and 80 years are different. Moreover, Article 14 of the constitution permits such classification stipulating that ‘unequals cannot be treated equals; equals cannot be treated unequally.’ The provisions of Acts of 1962 and 1972 stipulates that ‘enemy may be declared by the Central Government’. So, declaration is sovereign function.

3.4 Views of DR. Bhalchandra Munekar, Ex-MP

3.4.1 Dr. Bhalchandra Munekar stated that there is no historical precedent for this kind of management of enemy property. The proposed amendments are unacceptable or undesirable in spirit. The 1968 Act itself was not in good taste because it was passed in the background of 1965 Indo-Pak War over Rann of Kutch and 1962 Indo-China War. He stated that as far as amendments are concerned, these amendments are irrelevant in the present context of the international political situation and are derogatory in its content and unethical in its sense.

3.4.2 Dr. Munekar spelt out his views on the Bill as under:—

- (i) that the nomenclature of the Act itself needs to be reconsidered and an appropriate term for the management and sustenance of the property of the ‘so-called enemy’ needs to be reconsidered and a fine legalistic word could be found out for that.
- (ii) Relating to the retrospective application, he cited the Vodafone case which could not withstand the judicial scrutiny. According to him no law is implementable with retrospective effect, whatever the proposed amendments seek today, they cannot be retrospectively implemented right from 1968.
- (iii) As regards the scope of the definition of ‘enemy’, ex-MP stated that war is the most undesirable and most disastrous phenomenon and the people involuntarily fled away because they considered life more precious than their property. Under these conditions, the proposed amendment is now extending the definition and instead of amending the definition of the ‘enemy’, the Government is trying to expand the definition by also including the legal heirs of those who left India and fled from India from time to time during the Wars. Rather than restricting the definition within the scope of the national and international situation, he opined that the expansion of the definition is not applicable.
- (iv) The Bill provides that the proceeds and the revenue of the property, the ‘so-called enemy property’ would be credited to the Consolidated Fund of India. The management of enemy property is being considered as one of the revenue-raising resources. The custodian or the heirs of the property would be maintaining the property without having any claim on the revenue and the resources or the income generated, and the income would be transferred to the Consolidated Fund of India.
- (v) That the courts are sought to be kept away is violating the basic principle of the Indian Constitution. Keeping the court out of any kind of dispute is depriving the Judiciary of its basic constitutional function like that of a Legislature making the law and the Executive executing the law. The whole Judiciary’s existence is justified only due to its task of interpretation of the law.
- (vi) He further opined that the way the amendments are drafted, the way clauses are mentioned and the way its essence and contents are taken into consideration, it would not stand to the scrutiny of the law. That the 1968 Act needs to be repealed.

3.5 Views of Shri Ashraf Ahmad Sheikh, Advocate from Mumbai

- (i) The proposed amendments intend to prevent application of law of succession in case of enemy property to the legal heirs.
- (ii) In section 2 the words “Save as otherwise provided in this Act” need to be deleted because repeal clause stipulates that , “Notwithstanding such repeal, anything done or any action taken under the Enemy Property Act, 1968, as amended by the said Ordinance, shall be deemed to have been done or taken under the corresponding provisions of this Act as amended....” Because both are contradictory and never contained simultaneously in an Act or Bill.

- (iii) About the retrospective effect of the Bill, the apex Court gave a judgment in 2005 in Raja Khan's case. In this Bill, there are some penal provisions also in which certain amount of penalty is also sought to be increased. The Constitution says that whenever you are making retrospective laws, make sure that in case of penal laws, it is not retrospective, and secondly, it should not be harmful to the person to whom it has been inflicted because it is a general principle in law that no one shall be subject to double jeopardy. So, in this Bill, the retrospective effect will be totally unconstitutional and then there is a possibility that anybody can challenge this kind of legislation in the Supreme Court.
- (iv) Regarding bar of jurisdiction of the court, there is a Constitutional provision which says that if while making any Bill or law, it should not take away the powers of the Court or the earlier orders, judgments or decrees passed by the Tribunal or any court. There is a provision in the Constitution which says that the Legislature should not make such kind of law. The Supreme Court and the High Courts are flooded with so many cases. Whenever Supreme Court gives any order or judgment, the Parliament, makes a law which will be making an annulment to that order or judgment. Then, that legislation will be challenged in the Supreme Court and then the Supreme Court will declare it ultra vires. So, this will become a vicious circle.

3.6 Views of Shri Arjun Syal, Senior Advocate

- (i) That the amendments propose that now an Indian citizen would be under the ambit of the Act, which unfortunately, violates the very fundamental rights of an Indian citizen because the laws of succession which are automatic in nature would not be available to an Indian citizen who is covered under the Act.
- (ii) Regarding barring the jurisdiction of the civil courts, it may be noted that the questions of a property being an enemy property, the complicated questions of facts and the issues of succession etc., are important questions, which cannot be decided without a trial. In certain statutes, the jurisdiction of civil courts is barred, and, it is open for any person aggrieved by any circumstances to approach the court under the Writ jurisdiction under Article 226, Article 32, and, Article 136 of the Constitution of India. But the question is whether such questions can be decided summarily without a trial being initiated, and, whether such an important aspect should not include any court intervention.
- (iii) With regard to retrospective effect of the amendments, all transfers from the year 1968 to 2016 are now void, and, there have been subsequent third-party interest being created. This would not only affect thousands of people affected by the entire amendment, who can now be said to be owning enemy properties, but also the people who have subsequently purchased these properties from them. The entire jurisprudence from 1968 to 2016 has been completely upset. That the Bill does not provide a single opportunity of being heard to a person who is aggrieved for such retrospective function.
- (iv) on clause 2, the expert pointed out that an Indian citizen whose family member became immigrant and settled in a country, which is an enemy country now, would suffer because his succession rights are blocked. That is a violation of Article 14 of the Constitution of India.
- (v) Relating to the amendment proposed in Section 18 it may be mentioned that while under the existing section the Government can, by special order, de-notify the enemy properties, which now have been taken over by a clause which says that the party has to apply. If a particular country is declared as an 'enemy country' and the properties were taken over and thereafter the war is over, each and every person in that case would necessarily have to go before the concerned authority to represent his case. It would unnecessarily increase the litigation.

- (vi) New section 18A suggests that any interim income accruing from the property shall vest in the custodian and would become the part of the Consolidated Fund of India. Even if the properties are ultimately declared to be non-enemy property, the income made out of them will still go to the Consolidated Fund of India. That basically means that the person would have vested interest in delaying the matter for all practical purposes.

3.7 Views of Shri Rajiv Luthra, Senior Advocate

3.7.1 Delineating the thrust of the proposed Amendments, Shri Luthra maintained that the object of the proposed Amendments is to guard against claims of succession or transfer of properties left by people who migrated to Pakistan and China after the wars. The amendments deny legal heirs any right over enemy property. The main aim seems to be to nullify the effect of the Judgement of the Hon'ble Supreme Court in *Union of India & anr. V. Raja Mohammed Amir Mohammed Khan* reported in (2005) 8 SCC 696 wherein the question which fell for determination was whether the properties in question after their inheritance by the Respondent (i.e. being the sole legal heir of the Raja of Mahmudabad where the Raja himself had migrated to Pakistan) who was a citizen of India can be said to be enemy property within the meaning of Section 2(b) and Section 2(c) of the Act. The court inter alia held that a conjoint reading of Section 6, 8 and 18 of the Act indicated that the enemy subject due to vesting of his property in the Custodian is not divested of his right, title and interest in the property. Further, that the vesting in the Custodian was limited to the extent of possession, management and control over the property temporarily. It was held that the object of the Enemy Property Act was to prevent a subject of an enemy State from carrying on business and trading in the Property situated in India. It was also held that the respondent who was born in India and whose Indian citizenship was not in question could not be held to be an enemy or enemy subject under Section 2(b). Similarly, under Section 2(c) the property belonging to an Indian could not be termed as an enemy property. However, Hon'ble Supreme Court in *Union of India & anr. V. Raja Mohammed Amir Mohammed Khan* reported in (2005) 8 SCC 696 did not notice or consider the effect of Section 13 of the Act, as it stands, which clearly precludes any chance of a legal heir claiming a right to the property vested in the Custodian.

3.7.2 Section 13 of the original Act has given very wide powers to the Custodian to be able to retain the property and do as it wants. A property once vested in a Custodian under this Act at a material time shall for all purposes continue to vest in the Custodian who shall have all powers to dispose off such property in terms of Section 8A.

3.7.3 Pointing out the need for the amendments, Shri Luthra stated that according to the statement of objects and reasons on the Bill, "Of late, there have been various judgements by various courts that have adversely affected the powers of the custodian and the government of India as provided under the Enemy Property Act, 1968. In view of such interpretation by various courts, the Custodian is finding it difficult to sustain his actions under the Enemy Property Act, 1968. As the main aim of the proposed amendments seems to be to nullify the effect of the judgment of Hon'ble Supreme Court in *Union of India & anr. V. Raja Mohammed Amir Mohammed Khan* reported in (2005) 8 SCC 696. As such, it would be necessary to test whether the proposed amendments could be the subject of a valid Constitutional challenge before the Hon'ble Supreme Court.

3.7.4 Referring to the Legislative Competence the expert stated that the 2016 Bill proposes amendments to the Act and is in the nature of an amendment and validation bill. The twin tests for examining the validity of a validating law depends upon whether the legislature possesses the competence which it claims over the subject matter and whether in making the validation law it removes the defect which the courts had found in the existing law. Further, it is settled law that if the legislature has the power over the subject matter and competence to enact a validating law, it can at any time make such a validating law and make it retrospective. Undoubtedly, the Act had been enacted by the Parliament for the purpose of continued vesting of enemy property, vested in the Custodian of Enemy Property for India

under the Defence of India Rules, 1962 and the Defence of India Rules 1971. Further, the 2016 Bill is an attempt to amend certain provisions of the Act by the Parliament.

3.7.5 On the issue of validity of the validating act the expert further added that the validity of a validating law depends upon whether in making the validation law the legislature removes the defect which the courts had found in the existing law. It is settled as the legislature cannot declare any decision of a court of law to be void or of no effect. It can, however pass an amending Act to remedy the defects pointed out by a court of law or on coming to know of it aliunde. In other words, a courts' decision must always bind unless the conditions on which it is based are so fundamentally altered that the decision could not have been given in the altered circumstances.

3.7.6 The expert added that the Hon'ble Supreme Court in *Union of India & anr. V. Raja Mohammed Amir Mohammed Khan* reported in (2005) 8 SCC 696 had held that the enemy subject due to vesting of his property in the Custodian is not divested of his right, title and interest in the property and that the vesting in the Custodian was limited to the extent of possession, management and control over the property temporarily. This was undoubtedly held on a conjoint reading of Section 6, 8 and 18 of the Enemy Property Act, 1968. It was also held that the respondent who was born in India and whose India citizenship was not in question could not be held to be an enemy or enemy subject in view of the language of Section 2(b). similarly, under Section 2(c) the property belonging to an Indian could not be termed as an enemy property. As such, the proposed amendments under the 2016 bill seek to fundamentally alter the conditions on which the above mentioned pronouncement was rendered. Further, the amendments are pointed and arguable, the decision could not have been given in the altered circumstances *i.e.* if the proposed amendments had been in force on the date of the said pronouncement. The amendments to sections in question are all in the nature of deeming provisions and propose to retrospectively amend the law as well as the foundation of the pronouncement of the Hon'ble Supreme Court. The same is a valid exercise of power. As such, the proposed amendments are likely to survive any constitutional challenge on this ground.

3.7.7 The expert, however, pointed out a possible challenge on the basis of Article 14 of the Constitution of India. A challenge to Section 2(b) of the Act *i.e.* if the same is amended in terms of Section 2(III) which proposes that 'for the words "does not include a citizen of India", the words "does not include a citizen of India other than those citizens of India, being the legal heir and successor of the "enemy" or "enemy subject" or "enemy firm" shall be substituted and shall always be deemed to have been substituted on the ground that the same is violative of Article 14 of the Constitution of India. The challenge may be mounted on the ground that the provision essentially discriminates between citizens of the country as the same seeks to exclude the application of the laws of succession qua citizens who are legal heirs and successors of an 'enemy' or 'enemy subject' or 'enemy firm'. It is also pertinent to mention that the Hon'ble Supreme Court in *Union of India & anr. V. Raja Mohammed Amir Mohammed Khan* reported in (2005) 8 SCC 696 had also observed that to be just and act in a just manner is writ large in the Constitution of India and the laws. Further, that the legislature is to act in a just manner by enacting just laws within the framework of the Constitution. Such observations may be relied upon by a petitioner in proceedings mounting a challenge to the Act, if amended in terms of the provisions of the 2016 Bill.

3.7.8 The expert, therefore, argued that it is necessary to test the constitutionality of Section 2 (III) and the plausibility of such an argument in view of the law as laid down by the Hon'ble Supreme Court. The primary requirement and mandate of Article 14 is that equals have to be treated equally. Further, the classification must not be arbitrary but must be rational. The classical test in this regard is that two conditions must be fulfilled, namely (1) that the classification must be founded on an intelligible differentia which distinguishes those who are grouped together from others; and, (2) that differentia must have a rational relation to the object sought to be achieved by the Act. Considering the instant amendment the classification of citizens qua whom the laws of succession are intended to be excluded

rests on the basis of them being legal heirs and successors of the “enemy” or “enemy subject” or “enemy firm” as opposed to other citizens who are not legal heirs and successors of the “enemy” or “enemy subject” or “enemy firm”. Arguably, there is no discrimination as all citizens being legal heirs and successors of the “enemy” or “enemy subject” or “enemy firm” are treated as a single class it is the general right of the class that is sought to be altered. This is permissible and the classification is based on a logical ground and is not arbitrary. It is more than likely that the provision would withstand a challenge on the ground of Article 14 on this count. Also, the amendment bears a reasonable nexus with the object sought to be achieved *i.e.* to provide for the continued vesting of enemy property vested in the Custodian of Enemy Property for India. In a sense, the proposed amendment furthers the objects of the Act.

3.7.9 The expert pleaded that it is also necessary to understand the reason for desiring to perpetuate such continued vesting in the Custodian of Enemy Property. It is well known that though the Tashkent Declaration of January 10, 1966, *inter alia*, included a clause, which said that the two countries would discuss the return of the property and assets taken over by either side in connection with the conflict; the Government of Pakistan disposed of all such properties in that country in the year 1971 itself. He argued that the proposed amendments give effect to a policy decision of the Government of India, which involves foreign relations and is based on the reciprocity. Further, that the Courts should not interfere with the same.

3.7.10 The expert pointed out that there is the possible argument in a Constitutional challenge based on Article 300-A of the Constitution. It may be argued that right to property is a Constitutional right and that a person cannot be deprived of his property save by authority of law. However, such an argument would be of little or no avail in a scenario where the 2016 Bill otherwise passes constitutional muster inasmuch as the consequential deprivation of property would be in such a case, by authority of law. However, it would have to be demonstrated that the amendments are in public interest. It may be argued that the amendments are in the nature of a policy decision, which were necessitated in view of the fact that other governments *i.e.*, for instance that of Pakistan had disposed of all such properties in their country in the year 1971. As such, the amendments are reciprocal in nature and in consonance with diplomatic strategy.

3.7.11 According to the expert another aspect which needs to be considered is that of a possible challenge on the ground that the amendments seek to deprive the class of persons of property without payment of compensation. It is pertinent to mention that it has been held that the right to claim compensation or the obligation to pay, though not expressly included in Article 300-A, the same can be inferred in the Article and it is for the State to justify its stand on justifiable grounds which may depend upon the legislative policy, object and purpose of the statute and host of other factors. As such, it is settled that the legislation providing for deprivation of property under Article 300-A must be “just, fair and reasonable” as understood in terms of Articles 14, 19(1)(g), 26(b), 301 etc. Thus, in each case, courts will have to examine the scheme of the impugned Act, its object, purpose as also the question whether the payment of nil compensation or nominal compensation would make the impugned law unjust, unfair or unreasonable in terms of other provisions of the Constitution as indicated above. Thus, in a scenario where a challenge is mounted to the Act, if it is amended in terms of the 2016 Bill, on the ground that the same seeks to deprive the class of persons of their property without compensation, it would be necessary to demonstrate to the court that :

(i) the provision are just, fair and reasonable; (ii) the object and purpose of the Act as amended is to provide and facilitate the continued vesting of property with the custodian, which is in public interest. He also pointed out that “enemy” countries have also in the past disposed of such properties in a similar manner and that the amendments seek to provide for a similar mechanism on the principle of reciprocity.

3.7.12 The expert made comment on clause 12 of the 2016 Bill, which proposes substitution of Section 18 by a new Section.

3.7.13 According to the expert clause 12 of the Bill, which seeks to substitute Section 18 of the Act (sought to be amended) is not in line with the stance “once an enemy property. ... always an enemy property” and is capable of still being read in the same manner as the Hon’ble Supreme Court had read Section 18 as it presently stand in Union of India & Anr. V. Raja Mohammed Amir Mohammed Khan (2005) 8 SCC 696. He further suggested that it would be better if the substituted Section 18(as proposed to be amended) would read as follows:

“A property once vested in the Custodian under this Act at a material time shall for all purposes continue to vest in the Custodian, who shall have all powers to dispose of such property in terms of Section 8A of the Act unless the Central Government by general or special order, directs that such property vested in the Custodian under this Act and remaining with him shall be divested from him and be transferred, in such manner as may be prescribed, to such other person as may be specified in the direction.”

3.7.14 The expert added that the said formulation of the proposed amendment in section 18 of the principal act would remove all doubt as to the extent of vesting of the “enemy property” in the Custodian and would further clarify that such vesting is permanent in nature unless otherwise so ordered by the Central Government.

3.8 Views of Shri Chander Uday Singh, Senior Advocate, Supreme Court

- (i) In the Statement of Objects and Reasons of the present Bill, there is only one reason given why this Bill is introduced and that says in para 2, ‘of late, there have been various judgements by various courts that have adversely affected the powers of the custodian and the Government of India as provided under the Enemy Property Act, 1968’. The Act, enacted in 1968, was interpreted in 1969 by the Allahabad High Court in Mohammed Zaheer vs. Union of India case 1969 UD 436. It was held that ‘the custodian has no power to decide’, when there is a property where there is a dispute, whether it is an enemy property or not, the custodian cannot seize it. He has no power to decide unilaterally that this is an enemy property. He has to move to a civil court and seek a decree over there when there is a dispute about an enemy property. The Act came up for a serious consideration in the Bombay High Court in Hamida Begum case in 1975.
- (ii) The Bombay High Court took the view that on both the counts the vesting with the custodian is temporary. That the vesting is temporary and the vesting is only for preservation of the property for the purpose of ultimately being restored to the enemy alien as and when the peace is restored, etc. that there is no divestment of ownership and title, though possession, management and control go completely to the custodian but, nevertheless, there is no divestment of ownership and title. That judgement was ultimately confirmed by the Supreme Court of India in 1992. That same view was taken by the Calcutta High Court in 1976 in Sudhendu Nath Banerjee vs. Bhupati Charan Chakraborty case in AIR 76, Calcutta. Then the same view has been reiterated by the Allahabad High Court in 1986 in Rameshwar Dayal vs. Custodian of Enemy Property. So, they reaffirmed the view taken in Mohammad Zaheer case in 1969. This was then continued in Mumtaz Begum in AIR 1991, Calcutta. Again the same view was reiterated, and then lastly in Dr. Sayeed Ahmad case, a Division Bench of Allahabad High Court in 2007 reiterated same view. The law has remained settled, unchanged, unvaried for the last fifty years and there is no reason at all to unsettle it in this manner.
- (iii) The proposed amendments seek to set the clock back by going back to 1968 and saying that ‘from 1968 whatever was said by the courts for fifty years was not what we really intended to say. Parliament intended to say something altogether different and to expropriate properties altogether,’ whereby all transactions which have taken place, anything which has happened from settled rights of people

including those settled judgements which were never challenged and became final, are all now just wiped out by this retrospective amendment.

- (iv) Just keeping aside Pakistan for a moment, by definition, all Bangladeshi properties are seized by a friendly nation of theirs, though we never had a war with them but their children are our enemies. Their properties are enemy properties. So, this is something which has to be looked at. That there is no war with Pakistan after 1971. The fact is that we signed the Tashkent Declaration in January, 1966, which is internationally recognized as a declaration of peace. We then signed the Shimla Accord in July, 1972 which, again, is internationally recognized as an accord of peace. The Allahabad High Court in three judgments has said that there is no war like situation with Pakistan and, therefore, the Enemy Property Act has ceased to apply, but custodianship is continued. In Mirza Mazaf Ali Khan case, the Andhra Pradesh High Court took the historical perspective that in colonial India and in all civilised nations, confiscation or appropriation of properties on the ground of enemy nation has never been accepted.
- (v) The expert stated that the fact that Indian citizens, who are defined as 'enemy' of this country, is something which is not just violative of the Constitution; it is abhorrent to our Constitutional principles that we can define our own citizens and nationals of our country as 'enemy' of our country just because that person was born to somebody or has inherited from somebody who belongs to some other nation with whom we have had a war in the past. The 1968 Act, on the contrary, has been interpreted by all the courts, including the Supreme Court, twice as saying that it expressly excludes the citizens of India. So, the definition of the 'enemy' in the enemy or enemy subject in the 1968 Act expressly excludes the citizens of India.
- (vi) Replying to a Members query the expert added that property was a fundamental right till 1979. Today, it is a basic right and a constitutional right. It is protected by Article 300A of the Constitution. The Supreme Court has categorically held that it is a basic human right, though it is not given in the Fundamental Rights Chapter. From 1968 to 1979, property was very much a fundamental right for the citizens of our country. This amendment goes back to a period when property was a fundamental right for the citizens of our country. And those citizens of our country are now being characterised as enemies.

3.9 Views of Attorney General for India

3.9.1 Explaining the historical background of the Enemy Property Act, 1968, Attorney General stated that Act really came about after the aggressions by China and Pakistan and in the backdrop of the Tashkent Declaration executed between the Prime Minister of India and President of Pakistan. The Declaration among other items suggests that we will also look into and decide as to what is to happen to properties left behind in different countries where people crossed over and took citizenship of other countries. Unfortunately, the finalisation between the two countries in regard to sharing of property never happened. So, in 1968 when our Parliament passed the law, it passed it on the premise that currently, we will conserve and preserve the properties pending a finalisation between the two nations. Unfortunately, the finalisation never occurred, and the Act continued from 1968 till date in a state of preservation which is that the Government of India acts as a care taker, preserves the properties the properties which are called enemy properties which are of those persons who voluntarily went away from India and took Pakistani citizenship, etc. He further stated that preservation is a temporary or an interim phase. As far as Pakistan is concerned, the properties which were left by Indians who came over, have been confiscated, seized and sold away by Pakistan or utilised in some manner, and the Indian citizens who came from there never got any property back. So, the one issue in the new Bill is to bring a finalisation or a culmination of the effort of a temporary preservation.

3.9.2 Speaking about the second issue of the Bill, he informed that there came a judgement of the Supreme Court in one particular case observing that even though a person may have gone to Pakistan, may have become an enemy in that sense, it is not really enemy in the form of an aggression; it is an enemy because you went to an enemy country. So, the properties which he left behind were being preserved under this Act. But enemy as it stood in the 1968 Act did not within its fold include an Indian citizen. When a person goes to Pakistan voluntarily, he is declared an enemy. The properties taken over by the Government of India and kept in a state of temporary preservation and after that the gentleman died, his children are Indian citizens and since enemy did not include an Indian citizen, they said once that Chapter is over the properties should be handed back. The result of the judgment is that the Government of India will preserve enemies properties from 1968 till today and then the heirs who claimed to be Indians, say, by law of succession, would be given the property on a platter.

3.9.3 According to the Attorney General once a property is declared as 'enemy property', it really vests in the Government; the concept of vesting is always absolute. There is vesting in a large number of nationalisation Acts. Sick mills from Mumbai were taken over vested in the Central Government and the next moment, the Central Government gave it to the National Textile Corporation (NTC). So, individual companies have also been nationalised. So, we have to bring a finalisation from the temporary phase into a final phase. The only way the finalisation could be was to say that the vesting will be absolute and not merely for preservation, and once the vesting is absolute, the connecture of succession is split and there can be no succession. If a property is vested, it is vested free from all encumbrances in the Government, the Government becomes the owner. Then, the Government deals with it in the manner it desires. So, there is no question of any succession whatsoever. What has been done under this Act is essentially to make vesting absolute and to say that even if the heir is an Indian, the heir will not have recourse to the law of succession because meanwhile the vesting has come and it has cut the umbilical chord.

3.9.4 Once again he drew attention of the Committee to the Tashkent Declaration. According to him, the Statement of Objects and Reasons of 1968 Act stipulates that "The management of the properties by the custodian of enemy property for India has to continue, as it is not being possible for the Government of India so far as to arrive at a settlement with the Government of those countries." So, the Act recognizes that this is an interim situation. He further felt that till we finalize our situation under the Tashkent Declaration, we will ask the custodian to take over and retain them till we come to a final conclusion. That is why this Act provided that the custodian will preserve the properties, look after them and while preserving if it costs money, he can even sell a part of the property so as to expend moneys, etc.

3.9.5 He further stated that though the Parliament does not have the power to overrule a Judgement, but it certainly has power to remove the basis of the Judgement. 1968 Act said, "Will not include a citizen of India." So, the heir if he is an Indian citizen will not become an enemy subject. So, for the words 'enemy subject', the words 'an enemy subject including his heirs and successors whether or not a citizen of India' shall be substituted. So, this has been substituted and shall be deemed to have been substituted w.e.f. 1968 Act. Parliament has full power to make a law retrospectively. So, this is the retrospective operation. Then, the same thing for the words 'Does not include a citizen of India', has been amended to mean, 'whether or not a citizen of India.' Then, the power of the custodian has also been amended vide amendment in other provisions and said, 'The enemy property vested in the custodian shall, notwithstanding that the enemy or the enemy subject or the enemy firm has ceased to be an enemy due to death —because if somebody dies —extinction, winding up of business or change of nationality or that the legal heir and successor is a citizen of India, etc., the vesting will nevertheless continue.' So, vesting has been made absolute.

3.9.6 The third main provision is a bar of jurisdiction of a court, but that the bar of jurisdiction of a court does not include examination by the High court or the Supreme Court. So, bar of jurisdiction is always a bar of jurisdiction of a civil court, which means the District

Judge and below. So, wherever there is a bar or where it is said that the judgement of the authority shall be final—it is in hundreds and thousands of acts and it is nothing new—this does not preclude a person from going to the High Court and saying that despite the finality of the decision, the decision of the custodian in treating this to be an enemy property may be questioned. The concept of judicial review, namely, the High Court and the Supreme Court, is a part of the basic structure of the Constitution; that can never be taken away by any legislation.

3.9.7 Replying to the Members query that taking into account that right to property is not an absolute right, can a citizen be classified as an enemy, the Attorney General stated as under:

“in the first instance, there is no doubt that an heir of a person declared as an enemy, is not really an enemy because he lives here. The concept of enemy as per the 1968 Act or 1962 Act is really gone. That is not the issue. But, succession to property, as you rightly said, is not a Fundamental Right. It was a Fundamental Right but it has been taken out. Article 19(1) (f) of the Constitution is no longer there. So, right to property can always be devised, legislated, restricted and abridged. So, in this case, what has been done is that he will enjoy all other rights of property but not in respect of those properties which were declared as ‘enemy properties’ which will vest in the custodian. So, as a citizen, all rights are available, but not the rights of property..... But, there can certainly be intelligible difference between two types of citizens in regard to property.”

3.9.8 A Member of the Committee wanted to know that since in the nationalization Acts there was fairness and compensation was given whether the same could be given in the case confiscation of an the Enemy Property. The Attorney General responded that in every Act, there is compensation. But the difference is, under the 1968 Act an asset of enemy is being acquired which cannot be compared with an asset of a citizen or a citizen firm or a citizen company.

3.9.9 Another Member raised the query as to whether the Bill giving retrospective effect would not create more refuge and not be a complicated one amounting to injustice in a situation that the said enemy property has already been acquired by the stakeholder and enjoying the property, but taken back by way of a legislation. Responding to that Attorney General maintained that retrospectively could be given and had been given by Parliament over the last 50 years. The power of Parliament to do it is beyond doubt. The earlier Government brought an Ordinance in the year 2010 to prevent it from enforcing the judgement of the court. That lapsed. Then again petitions were filed by the heirs of that person because in that case some 800 or 900 properties are involved. According to him, those petitions are currently pending in the Supreme Court and during that pendency this has come. Really speaking, it is not a case where thousands or millions of people have got rights.

3.9.10 A Member sought to know as to when somebody must have migrated, voluntarily or by any other means, for those who remained here whether it not be appropriate to respect the rights of fellow citizens whether property or anything else. The Attorney General maintained that the question would be, the heir, who is an Indian citizen who is living here, claims it only through the so-called enemy and it is not that he has got his independent right. Another Member interjected that the person will have an independent right and claims as a succession and not because the property belongs to somebody else. Attorney General added that the claim is made on succession from his father who went away and there can be no succession in case of enemy property.

3.9.11 In regard to a query as to whether the persons cultivating the enemy property land, could be owners or they continue and also what would be the fate of the people who are claiming it as their property, as they have a right to claim that property, but, already, there are people in possession of that property, the Attorney General stated as under:

“Firstly, if there are people in possession of property and it is claimed to be an enemy property, they will have to show in what capacity they are sitting there or tilling the

fields. If they just entered and started tilling the fields or using it, then they have no right to the property. They found it open so they have used it. If that is so, the custodian will have a right to take it back. If they were tenants of the enemy, if they could prove that they were the tenants of the so-called enemy, then their tenancy must continue because the owner changes. The tenant's rights are separate and protected by separate legislations of every State.....because the law protects a tenancy. So, if they are tenants prior to the time that custodian came, their tenancy will be protected. If they have no right and they have encroached on the property, then they have no right whether it is owned by the custodian or by the so-called successor. Thirdly, it is open to the custodian to say that if you are carrying on for the last so many years, I can give you some more time or I accept you as a tenant, at least, from today and we can have a fresh tenancy. All those things are possible."

3.9.12 When asked as to while framing the original legislation why the term 'enemy property' was originally used in the act 1968 the Attorney General replied that the original Act of 1968 was an aftermath of the Aggression in 1965. So, at least, in 1965, Pakistan was an enemy country. So, we called it 'enemy'.

3.9.13 On being enquired about the difference between the Enemy Property Act and the Evacuee Property Act and whether the inheritance rights of Evacuee Property also get affected in any way, the Attorney General replied in the negative and further added as under:

"the Evacuee Property Act is completely different. This was the aftermath of partition. People went away from here. People came from there leaving behind different properties. We had the Ministry of Rehabilitation under Shri Meher Chand Khanna in those days. So, evacuee was a man who went away or a man who came being displaced. They were really displaced persons. So, what used to happen was, if I came from Lahore to India and I left properties in Lahore with valid papers, I would show it to the Authorities here and in lieu of that, I would get something from the Government, some sort of a compensation which could be in cash or some property. Actually, those situations are now obsolete. There is no evacuee. The Displaced Persons (Rehabilitation and Compensation) Act has been finished. There is no such Ministry and that chapter is over, that too, some 50 years back."

3.9.14 Another Member sought to know the fate of the *wakf* property, *Mehr* property and the property of the persons having property in the name of the elder brother who went to enemy country but three of them stayed in India. Responding to the queries the Attorney General stated that in the individual case the property would be confiscated but in case a declaration is made that the property in question was inherited from his father who died and property was to be divided into four brothers but was in the name of the elder brother, in that case $\frac{1}{4}$ of the property will be confiscated, in case there is no such declaration the whole property will be confiscated. The Attorney General further added that there is no mention of *wakf* property in the Act and as regards the *mehr* as per law it will be confiscated.

3.9.15 A Member of the Committee pointed out that India being a welfare state must deliver justice at the reasonable cost to weaker sections and whether the Government of India is bound to have a reciprocal steps over the steps under taken by the Government of Pakistan in relation to the enemy property. Responding to that the Attorney General stated that there cannot be two sets of laws for applying to two section of people on the one issue. He further added that proposed amendment ensures justice and reasonableness under Clause 4 5A. He also referred to the amendment to section 18 in this regard.

3.9.16 Responding to a pointed query as how long the process of identify the enemy property would continue, the Attorney General agreed with the sentiments of the Members that many years have gone by and this process has become endless. It will lead to difficulties, etc. The frozen period is 1977. The argument in favour is once an enemy property; it is always an enemy property notwithstanding whether discovered today or tomorrow. That is on this side. The other side is the realism. He however, suggested that the select Committee could consider putting a cut-off date.

3.9.17 The Chairman of the Committee sought to know whether the Bill is sufficient to address all the issues after the Supreme Court Judgement; and whether giving retrospective effect to many Clauses of the Bill would stand the judicial scrutiny. The Attorney General responded as under:

“I think, it will, Sir. It will because as I said, you cannot reverse a judgement of the Supreme Court; you have to undo the basis of the judgment of the Supreme Court. So, when you undo the basis, the basis of 2004 Judgement has to be undone today as if you are sitting back in 2004. Therefore, retrospectively, it will have to be done”.

3.10 Views of the State/UTs Governments

3.10.1 In its meeting held on 19th April, 2016, the Committee heard the views of representatives of 17 state/UT governments. Besides, some states sent written views also. The views of the States/UTs Government are enumerated below:

3.11 State Government of Bihar

3.11.1 The State Government of Bihar in its written comments has stated that it is in complete disagreement with the provisions of the Bill. The State Government has further stated as under:

“The State Government of Bihar opposes the amendment proposed in the Bill in the definition section of the original Act. The State Government considers depriving legal heirs and successors of their legal rights in the property vested in the custodian a contravention of the principles of natural justice and canons of law as enshrined in our Constitution. It is a punishment meted out to those legal heirs and successors who chose to stay back in India even after their guardian decided to leave this country. The State Government is of the opinion that this provision is against the basic principles of jurisprudence India has developed assiduously over the ages and the very “Idea of India” envisaged by our constitution makers and freedom fighters. The State of Bihar considers the insertion of the new Section 18A as a draconian piece of legislation as it nullifies the lawful gain made by a person upon an order passed by the Central Government U/S 18 of the Act. This new section completely violates principles of natural justice and the basic feature of the constitution of India.” The Principal Secretary of the State Government, who appeared before the Committee reiterated the written views submitted.”

3.12 State Government of Telangana

3.12.1 The State Government of Telangana in writing communicated that written comments on the Bill may be treated as nil except in respect of Section 5A, Section 8 and Section 10 whereupon the amendments as proposed by the State Government are enumerated below:

- (i) In Section 5A, after the words “evidence of the facts stated therein”, the words “soon after issue of the certificate by the Custodian the property shall vest in the State Government” may be added.
- (ii) In Section 8, the powers of disposal of enemy properties whether by sale or otherwise shall be vested with the State Government concerned instead of Custodian of enemy properties.
- (iii) In Section 10, the powers of issue of certificate of sale shall be vested with State Government concerned instead of the Custodian.

3.12.2 The Principal Secretary of the State of Telangana appeared before the Committee reiterated the written comments.

3.13 State Government of Kerala

3.13.1 The State Government has proposed the following amendments in the Bill:—

- (i) That insertion of new section 5B: If law of succession is not to be applied to enemy property, it will badly affect the possession and enjoyment of the existing possessors. Because most of the enemy properties in the state are held by the successors/legal heirs following the demise of the actual possessors.
- (ii) Amendment of section 6: It gives absolute power to the Enemy Property custodian insertion of Section 6 (2) may curtail the jurisdiction of the civil courts which needs to be looked into.
- (iii) Insertion of new section 8A (3): May include the addition that the sale proceeds may be deposited in the consolidated funds of India and the State in the ratio 1:1.
- (iv) Insertion of Section 10A: As per state land laws and rules, title deed, previous documents of the property etc. are needed for effecting mutation, but insertion of Section 10A would require subsequent changes in the state laws.
- (v) Substitution of new section for section 18: The opinion of the State Government has to be obtained as land is vested with the State Government.
- (vi) Insertion of New Section 18A: can be amended as proposed and sale proceeds may be shared with the State Government in ratio 1:1.
- (vii) Insertion of new Section 18B: May curtail the jurisdiction of the civil courts which needs to be looked into.
- (viii) Amendment of Section 22: It includes law of succession, therefore, will affect most of the Enemy Property holders in the state. There are 59 enemy properties land are spread over in 5 districts of Kerala. Most of the above lands are in the possession of legal heirs/successors. As per available records are pending with the Hon'ble High court of Kerala in connection with the acceptance of basic tax for the enemy properties. In Kerala, approximately 35.00 acres as identified as enemy properties. The proposed amendment may affect hundreds of families in the state.

3.13.2 The Additional Chief Secretary of the State who appeared before the Committee reiterated the written comments.

3.14 State Government of Uttarakhand

3.14.1 The State Government of Uttarakhand in writing communicated that the Bill is sufficient and state has no objection. The Principal Secretary of the State reiterated the same before the Committee.

3.15 State Government of Maharashtra

3.15.1 The State Government of Maharashtra communicated its comments on the Bill in writing which are as under:

“As per the time lapses and changes in circumstances there was need to amend certain provisions of the said Act and it appears that proposed bill has covered all the necessary aspects in this regard. This government is of opinion that the draft bill is appropriate.”

3.15.2 The Secretary, Relief and Rehabilitation reiterated the same view before the Committee.

3.16 State Government of Haryana

3.16.1 State Government of Haryana communicated its comments in writing stating that since the proposed amendments aim to plug the loopholes in the Principal Act, 1968, the

State Government has no objection on the various provisions of the Bill. The Principle Secretary reiterated the same view before the Committee.

3.17 Government of NCT of Delhi

3.17.1 The Chief Secretary of Government of NCT of Delhi putting forth the views of the Government, in writing stated that the state Government is in favour of the Bill except the one proposed amendment debarring the jurisdiction of the civil courts which goes against the established procedure of administration of justice. The Chief Secretary who appeared before the Committee reiterated the same view.

3.18 State Government of Chhattisgarh

3.18.1 State Government of Chhattisgarh has furnished its comments on the Bill in writing which are enumerated below:

- (i) The Bill seeks to keep enemy property once vested in the custodian shall remain vested in the custodian irrespective of legal heir and successor is a citizen of India as well as changing status of enemy or when an enemy is ceased to be an enemy. It also bars applicability of any law relating to succession or any custom or usage governing succession to thus could have been accrued by any transfer made by an enemy and in such case retrospectivity would not affect the right of any person. Further all fake transactions or transfers made on the basis of false and fabricated documents or executed in collusion shall face the same fate of nullity and the enemy property shall be reverted back to the custodian.
- (ii) Barring jurisdiction of the Civil Court would lessen the fake litigations which otherwise would have increased in the subordinate courts causing wastage of time and money. People having legitimate claims are not without any remedy as they can make their representation to the Central Government regarding their right if any over the enemy property.
- (iii) As the proposed amendment bill seeks to preserve more than thousands of enemy properties throughout the country from being encroached and falling into the hands of fake and unauthorized persons, the State of Chhattisgarh agrees with the proposed Enemy Property (Amendment and Validation) Bill, 2016

3.19.2 The Principle Secretary of the State who appeared before the Committee reiterated the same view.

3.19.3 State Governments of Assam, Tamil Nadu, Goa and Gujarat and UT of Diu communicated in writing their comments endorsing their agreement on the Bill. The Principle Secretaries of Assam, Tamil Nadu and Gujarat and UT of Diu in their oral evidence reiterated the written views.

3.19.4 The Chief Secretary of Madhya Pradesh who appeared before the Committee agreed to the Bill. However, in the written note sent later, the state Government made the following suggestions:

“provided that the first choice to purchase such property shall be given to the Government of the State in which such property is located, and only upon refusal by the State Government concerned, the property shall be otherwise disposed of;

Provided further that the property shall be offered to the State Government by the Custodian for an amount calculated at the rates prevailing on the date such property was notified, or deemed to have been notified, as enemy property.”

3.20 State Government of West Bengal

3.20.1 The Principal Secretary of West Bengal did not give any comments in view of election and the views were not finalized.

3.21 State Government of Karnataka

3.21.1 The Additional DG, Police (Internal Security) representing the State Government of Karnataka informed the Select Committee that the comments of the State Government on the Bill are still under consideration of the Government and, therefore, needs some more time to send the State's views.

3.22 The representatives of Meghalaya and Daman & Diu have supported the Bill.

CHAPTER IV

ISSUES

4.1 During the course of the discussions with Home Secretary stakeholders/experts and representative of the State Governments and Attorney General, some issues were raised by the Members of the Committee as well as the stakeholders/experts. The Committee deals with such issues as under:

4.2 Power of the Custodian to secure vacant position of the Enemy Property

4.2.1 The Committee finds that the Enemy Property (Amendment and Validation) Bill, 2016 proposes amendment in Section 8 (2) (iva) in the Principal Act pertaining to the powers of the Custodian to secure vacant possession of the Enemy Property by evicting from the unauthorized or illegal occupants or trespassers and remove unauthorized or illegal constructions if any on the Enemy Property. Some Members of the Committee raised the concerns that the proposed amendments are likely to hurt a lot of people and particularly the middle class and poor people. Some enemy properties are on rent for financial institutions like banks, LIC and even the common people who have been staying on enemy property as tenant for generations together who may feel unsettled all of a sudden once the proposed amendments, if enacted, are implemented, on ground level. It was also pointed out that the Rent Control Act applies to such properties which have been given on rent basis, therefore, the proposed amendment may play havoc in the minds of such occupants.

4.2.2. The Select Committee recommends that once the Government implements the proposed amendments to dispose of the enemy property under section 8A on the ground level by selling, the interest of the present occupant/tenant may be taken care of for the time being so that the tenants are not unsettled all of a sudden or the running business of the financial institutions/PSUs does not get disrupted. In this regard, the Committee further recommends that a reasonable period of time may be provided to the affected parties to arrange for alternate accommodation before the eviction order is implemented.

4.3 Transparent, accountable and foolproof system of Identification and Disposal

4.3.1 During the course of the discussion on the Bill, an issue regarding increasing number of enemy properties was raised by a Member. It was pointed out that initially 2100 enemy properties were identified but now it has risen to 16000 which casts doubts not only on the mechanism of identification of the enemy properties and its continued vesting in the Custodian. According to the Ministry of Home Affairs, although the crucial vesting period is 1962 to 1977 but the process of identification of enemy properties is still going on. In this context, the Committee takes note of the explanation of Ministry of Home Affairs which is as under:—

“Earlier, the holding of one person was regarded as one Property (total around 2100), even if it consisted of many plots. But, while doing work at the ground level it was felt necessary that a holding which includes more than one plot must be calculated plot wise. Thus, later in 2013-14 it increased to about 9280.”

4.3.2 In response to a Member’s query regarding time frame for identification of enemy property, the Ministry of Home Affairs replied that identification of enemy property and its vesting in the custodian was a continuous process and a property in West Bengal was declared as enemy property as late as February, 2016. In response to the query of the Chairman of the Committee about the number of pending cases and number of affected persons, the custodian replied that there are 5000 pending cases affecting more than 1000 persons. Some of the Members raised concern regarding the continuous process of vesting of enemy properties even after almost 40 years of the crucial vesting period that ended on 26th September, 1977. One of the Members also cast doubt on the process of vesting wherein

decentralization of office of custodian of enemy property has resulted in issuance of notice for declaring a property an enemy property if a member of the family living in that property went to an enemy country even before or after the crucial vesting period. Such misuse may happen if this process drags on for perpetuity.

4.3.3 In this connection attention is drawn to the relevant observation of Department-related Parliamentary standing Committee on Home Affairs in its 155th Report on the Enemy Property (Amendment and Validation) Second Bill, 2010 presented to Rajya Sabha on 23rd November, 2011 and laid on the table of Lok Sabha on 22nd November, 2011:—

“The Committee was informed that it would take three or four years to complete the verification and disposal and for winding up of the office of Custodian of Enemy Property. The Committee, however, feels that if the things move at the current pace, it may take even more than four or five years. The Committee takes note of the fact that Pakistan had long back seized properties of Indians and disposed them off in breach of the mutual agreement. It, however, does not mean that the enemy properties and the Office of the Custodian of Enemy Property should remain in perpetuity. The Committee, therefore, desires that a time-bound plan may be drawn and the entire process of identification of enemy properties and disposal may be completed within a stipulated time.”

4.3.4 The Select Committee is in agreement with the observation of the DRSC on Home Affairs that identification/verification of enemy properties must not go in perpetuity. The Committee takes a serious note of the fact that the process of identification/verification of Enemy properties has not yet been completed and is still going on. The Committee, therefore, recommends that the rules governing the enemy properties must have a defined cut-off date for the final verification/identification of enemy properties. The Committee recommends that the process of identification of Enemy properties should be completed within two years from the date of enactment of this Act. Immediately after the passage of the Bill, the Custodian should dispose of all non-contentious enemy properties without much delay. The Committee strongly recommends that there should be a foolproof and transparent system for the final disposal of the enemy property.

4.4. Wide publicity to the Rules governing Enemy Properties

4.4.1 Some Members of the Committee and stakeholders/experts raised the issue that the mechanism for redressal of grievances at the lower level is neither adequate nor transparent and apprehended that the enquiring officer may harass common man by declaring anybody's property as enemy property just on the complaint of anyone without proper investigation and examination. The Members pointed out that in the Bill there is no provision for a just and fair system of disposal of justice at the lower level while the custodian and its officers have been given mammoth powers. In response to the concerns raised in this regard the custodian of enemy property for India informed that all District Magistrates of the country have been declared as deputy custodian of enemy property ex-officio. Surveyors at the block level check the record and ensures that only when the holders of the property migrated to an enemy country during the crucial vesting period, then only a notice is issued once or twice and if the affected person comes before the hearing authority then the proceedings are taken up otherwise the property is vested.

4.4.2 The Committee is of the view that the just and fair system of delivery of justice should be incorporated in the Rules governing the enemy property and the same should be given wide publicity for the benefit of stakeholders all over the country. The Committee strongly recommends that proper investigation and due and transparent process must be followed during identification and declaration of enemy property. After the proceedings of the Custodian are over, the aggrieved person should be provided opportunity to represent his case to a Designated Officer of the Ministry of Home Affairs who must be easily available to the aggrieved persons. This should be specifically mentioned in the Rules.

CHAPTER V

CLAUSE BY CLAUSE CONSIDERATION OF THE BILL

5.0 The Select Committee in its meeting held on the 28th April 2016 took up clause-by-clause consideration of the Bill, the details of which are enumerated below:

Clause 2

5.1.1 Sub-clause (1) of this clause seeks to amend clause (b) of section 2 of the Enemy Property Act, 1968 (Act) so as to substitute the words “an enemy subject” with the words “an enemy subject including his legal heir and successor whether or not a citizen of India or the citizen of a country which is not an enemy or the enemy, enemy subject or his legal heir and successor who has changed his nationality”. It is further proposed to substitute the words “an enemy firm” with the words “an enemy firm, including its succeeding firm whether or not partners or members of such succeeding firm are citizen of India or the citizen of a country which is not an enemy or such firm which has changed its nationality”. It is also proposed to substitute the words “does not include a citizen of India” with the words does not include a citizen of India other than those citizens of India, being the legal heir and successor of the “enemy” or “enemy subject” or “enemy firm”. By amending clause (b) of section 2 of the Act, it is proposed to expand the definition of “enemy subject” thereby including the legal heir and successor of an enemy, whether a citizen of India or a citizen of a country which is not an enemy and also include the succeeding firm of an enemy firm in the definition of “enemy firm” irrespective of the nationality of its members or partners.

5.1.2 It is also proposed to insert an explanation to the expression “does not include a citizen of India” in clause (b) of said section and another explanation in the said clause so as to clarify that nothing contained in this Act shall affect any right of the legal heir and successor referred to in this clause (not being inconsistent to the provisions of this Act) which have been conferred upon him under any law for the time being in force.

5.1.3 It is also proposed to amend the proviso to clause (c) of said section so as to include the words “or dies in any territory outside India” after the words “dies in the territories to which this Act extends”. It is also proposed to insert an explanation in the said clause so as to clarify that the “enemy property” shall, notwithstanding that the enemy or the enemy subject or the enemy firm has ceased to be an enemy due to death, extinction, winding up of business or change of nationality or that the legal heir and successor is a citizen of India or the citizen of a country which is not an enemy, continue and always be deemed to be continued as an enemy property. It is also proposed to give an explanation to the expression “enemy property” which shall mean and include and shall be deemed to have always meant and included all rights, titles and interest in, or any benefit arising out of, such property.

5.1.4 The aforesaid amendments have been proposed on and from the date of the commencement of the Enemy Property Act, 1968.

Views of the Members:

5.1.5 Shri K. Rahman Khan opposed the inclusion of clauses 2(b) and 2(c) because that is a new clause which was neither in 1968 Act nor in the 2010 second Bill. It is only in 2016 Bill that the definition of ‘enemy’ or ‘enemy subject’ has been brought out, which includes Indian citizen of a non-enemy country and an ‘enemy firm’, which includes succeeding firm, which is unconstitutional and irrational.

5.1.6 He also opposed making this legislation ‘retrospective’ which further amounts to making two categories of citizens, one with ‘enemy ancestors’ and the other being a ‘general citizen’. If an ancestor is a criminal or whatever it is, his son does not inherit those things. A citizen is a citizen with all the rights and cannot be discriminated. It clearly violates article 14 of the Constitution which relates to the equality before law.

5.1.7 Shri P. L. Punia while opposing clause 2 stated that the Bill takes away the rights of citizens provided in the original 1968 Act. The present Bill is against the basic objective of the original Act of 1968.

5.1.8 Shri Husain Dalwai in his notice for amendments argued that the Bill works to disinherit and deprive generations of Indian citizens who have resided in India and bear allegiance to the Indian nation, from their rightful property, simply because their ascendant/s had migrated to Pakistan or were of Chinese origin. Moreover, the self-acquired property of the legal heirs of an enemy will also be subject to being acquired by the Custodian as “enemy property”, on the ground that they too are “enemy subjects” in their own right. The classification places the descendants of enemy subjects, who otherwise have no ties to the former enemy State, on the same level as the original enemy subjects, and therefore violates article 14 of the Constitution. Original Act was individual-centric and not property-centric. It is the person who is first declared enemy and only then is his or her property declared as ‘enemy property’. Therefore, if the person is no more, or his enemy status has come to an end, the property cannot continue to be enemy property. If the enemy status of the property is made permanent, then the property will continue to be enemy property forever, even after it has been disposed of by the custodian.

5.1.9 Therefore, he suggested that the application of the Act should be limited to the people originally declared as enemies, that is, Pakistani and Chinese nationals, and only till the time that they are alive. The enemy status is of the owner of the property and not of the property itself. So, if the owner is no longer an enemy, an enemy property can also no longer be an enemy property. This clause is unconstitutional as it creates a superficial differentiation between legitimate citizens of India. For reasons explained above, the Bill is discriminatory in nature and hence this clause needs to be withdrawn completely.

5.1.10 The Government has given a justification that retrospective amendment of an Act is permitted to remove a defect which has been pointed out by a Court while interpreting that Act. The defect pointed out in the interpretation by courts that enemy properties can be passed down to their heirs and when that happens, the property ceases to be enemy property. To remove this defect, the Government has made an amendment to expand the definition of enemy subject to include the legal heirs of enemy/enemy subjects to prevent the inheritance of enemy property by them. It must be noted that the original section 2(c) of 1968 Act specifically excluded citizens of India. It must be noted that this is not a case of an omission but of express exclusion. The Government also hasn’t clarified the intention behind expressly excluding Indian citizens in the first place. He has therefore suggested that clause 2 must be deleted.

Views of the Government:

5.1.11 Responding to the amendments moved by the Members as stated above, the Ministry of Home Affairs clarified that the definition of enemy is in a particular context. The definition of enemy subject includes the legal heirs and successors of the enemy, only for the purpose of enemy property. No other property rights or inheritance rights are affected by this. As per proviso to section 2(c) of the principal Act “where an individual enemy subject dies in the territories to which this Act extends, any property which immediately before his death, belonged to or was held by him or was managed on his behalf, may, notwithstanding his death, continue to be regarded as enemy property for the purpose of this Act.”

5.1.12 The Ministry of Home Affairs pointed to the enshrined implication of section 13 of the principal Act which gives vast powers to the custodian. Section 13 provides that—

Where under this Act,

- (a) any money is paid to the Custodian ; or*
- (b) any property is vested in the Custodian or an order is given to any person by the Custodian in relation to any property, which appears to the Custodian to be enemy property vested in him under this Act,*

neither the payment, vesting nor order of the Custodian nor any proceedings in consequence thereof shall be invalidated or affected by reason only that at a material time,—

(1) some person who was or might have been interested in the money or property, and who was an enemy or an enemy firm, had died or had ceased to be an enemy or an enemy firm ; or

(2) some person who was so interested and who was believed by the Custodian to be an enemy or an enemy firm, was not an enemy or an enemy firm.”

5.1.13 The Ministry of Home Affairs concluded that if some property is vested or money is paid and subsequently the person dies, or it turns out that he was not even an enemy, in that case also neither that payment is affected nor that vesting is affected nor that order is affected. This is there in the principal Act.

5.1.14 The Ministry of Home Affairs also dwelt upon the deliberation of Attorney General for India given before this Committee on the issues on the 12th April, 2016 which runs as under:

“once a property is declared as ‘enemy property’, it really vests in the Government; the concept of vesting is always absolute..... So, we have to bring a finalisation from the temporary phase into a final phase. The only way the finalisation could be was to say that the vesting will be absolute and not merely for preservation, and once the vesting is absolute, the connecture of succession is split and there can be no succession. If a property is vested, it is vested free from all encumbrances in the Government, the Government becomes the owner. Then, the Government deals with it in the manner it desires. So, there is no question of any succession whatsoever.”

5.1.15 The Ministry of Home Affairs summed up its viewpoint on the issue by maintaining that an heir can only get what the propositus had. If the father did not have the property and it was vested with the Custodian, then the legal heir cannot get a better title. The Ministry further pointed out that the matter was discussed with the Law Ministry. The various clauses of the Bill are interlinked and removal of one will affect the overall Bill.

Recommendation

5.1.16 This Clause has been Adopted with no change

Clause 3

5.2.1 This clause seeks to insert a new sub-section (3) in section 5 of the Act so as to provide that the enemy property vested in the Custodian shall, notwithstanding that the enemy or the enemy subject or the enemy firm has ceased to be an enemy due to death, extinction, winding up of business or change of nationality or that the legal heir and successor is a citizen of India or the citizen of a country which is not an enemy, continue to remain, save as otherwise provided in this Act, vested in the Custodian. The explanation to the said sub-section provides that “enemy property vested in the Custodian” shall include and always deemed to have been included all rights, titles, and interest in, or any benefit arising out of, such property vested in him under this Act.

5.2.2 The aforesaid amendments have been proposed on and from the date of the commencement of the Enemy Property Act, 1968.

Views of the Members:

5.2.3 Shri K. Rahman Khan pointed out that the original Act, as also the 2010 Bill, says, “The enemy property vested in the Custodian shall, notwithstanding that the enemy or the enemy subject or the enemy firm has ceased to be an enemy due to death, extinction, winding up business or change of nationality or that the legal heir and successor is a citizen of India or the citizen of a country which is not of an enemy, continue to remain vested in the Custodian till it is divested by the Central Government.” The provision is that the

Central Government has to take a decision on divesting. The Custodian has to exercise the power with certain restrictions. He is only a Custodian. Now, the words ‘till it is divested from the Central Government’ have been removed from the new Bill. Agreeing to the views of Shri K. Rahman Khan, Shri P.L.Punia suggested that in clause 3, after the word “Custodian” at the end of the section 5(3) the words “till it is divested by the Central Government” may be inserted and after the words ‘continue to remain’, the words “save as otherwise provided in the Act” may be deleted.

5.2.4 Shri Husain Dalwai supported the amendments suggested by Shri K. Rahman Khan and Shri P.L.Punia. He was of the view that clause 3 has similar effect as clause 2(2) Explanation -I & II. If clause 2 has to be deleted, clause 3 also cannot be sustained. He further moved that after page 2, line 44, for the words, “On and from the date of commencement of principal Act”, the words “On and from the date of commencement of this Act” shall be substituted. Moreover, the words “shall always be deemed to have been” should be excluded from wherever they are used in this clause.

Views of the Government:

5.2.5 Responding to the amendments moved by the Members, the Ministry of Home Affairs took the view as given above in clause 2 and as also clarified by the Attorney General that “If a property is vested, it is vested free from all encumbrances in the Government, the Government becomes the owner. ...” The Ministry of Home Affairs corroborated its viewpoint by further mentioning the enshrined implication of section 13 of the principal Act also clearly indicating the same position.

5.2.6 The Ministry of Home Affairs also clarified that the provision of divesting the property by the Central Government was there in section 18 of the principal Act which was an exception in case the property was wrongly vested in the Custodian. In the current Bill there is a provision for transferring the property to the person from whom it was acquired in case that property is held by the Government as not being an enemy property.

Recommendation

5.2.7 This Clause has been Adopted with no Change.

Clause 4

5.3.1 This clause seeks to insert a new section 5A in the Act relating to “issue of certificate by custodian”. The proposed new section seeks to provide that the Custodian may, after making such inquiry as he deems necessary, by order, declare that the property of the enemy or the enemy subject or the enemy firm described in the order, vests in him under this Act and issue a certificate to this effect and such certificate shall be the evidence of the facts stated therein.

Recommendation

5.3.2 This Clause has been Adopted with no Change.

Clause 5

5.4.1 This clause seeks to insert a new section 5B in the Act relating to “law of succession or any custom or usage not to apply to enemy property”. The proposed new section seeks to provide that nothing contained in any law for the time being in force relating to succession or any custom or usage governing succession of property shall apply in relation to the enemy property under this Act and no person (including his legal heir and successor) shall have any right and shall be deemed not to have any right (including all rights, titles and interests or any benefit arising out of such property) in relation to such enemy property. The explanation to the said section provides that the expressions “custom” and “usage” signify any rule which, having been continuously and uniformly observed for a long time, has obtained the force of law in the matters of succession of property.

5.4.2 The aforesaid amendments have been proposed on and from the date of the commencement of the Enemy Property Act, 1968.

Views of Members:

5.4.3 Shri K. Rahman Khan, argued that Custom and usage are not law of inheritance. It has to be there because it is a legitimate law and therefore he had an objection to Clause 5. He reasoned that if a person, before he migrates, has given a property on *hiba*, then that property becomes the wife's property and if the wife has not left that property, then that property is not his property as per law. It is the wife's property.

5.4.4 Shri Husain Dalwai opposing the clause pointed out that there was an inherent contradiction in the Bill. On one hand the Bill expands the definition of enemy subject to also include the legal heirs or successors of enemy and on the other hand bars the application of laws of succession to enemy subjects. Now all the provision of the Bill are with reference to an enemy property only. So, in effect, if no law of succession applies to an enemy property, then that enemy property cannot be passed on and so with respect to that particular enemy property, there will be no legal heirs or successor making the expansion in the definition of enemy subject infructuous. But by expanding the definition of enemy subject, the Bill recognizes that with respect to enemy property there can be legal heirs or successors. But for such persons to become legal heirs or successors of enemy subjects with regard to enemy property, the law of succession must apply to them. So, in essence, on one hand acknowledging the presence of legal heirs and including them in the definition of enemy subject and on the other hand saying that no law of succession applies to enemy property are entirely two contradictory statements and cannot stand together.

5.4.5 The said Member further argued that succession is automatic and as long as ancestor had the title, the property will pass on to the legal heir, no law can prevent that and only the owner can provide for otherwise. The state can invoke eminent domain and take away the property, but the property will not pass on if the title has been lost, but if that is not lost, then even in the absence of any law, the property will pass on.

5.4.6 Shri K. Rahman Khan, Shri Husain Dalwai and Shri P. L. Punia, therefore, suggested that in clause 5, newly inserted Section 5B and the explanation to 5B may both be deleted.

Views of the Government

5.4.7 Replying to the amendments/viewpoints of the Members, the Ministry of Home Affairs took the view that Law of succession does not apply to the enemy properties. The principal Act provides that the vesting of the enemy properties shall continue to vest in the Custodian, notwithstanding the death of the enemy subject. Section 2(c) and section 13 of the principal Act reflects the same.

5.4.8 As per proviso to section 2(c) of the principal Act "where an individual enemy subject dies in the territories to which this Act extends, any property which immediately before his death, belonged to or was held by him or was managed on his behalf, may, notwithstanding his death, continue to be regarded as enemy property for the purpose of this Act."

5.4.9 Corroborating its viewpoint the Ministry of Home Affairs cited the Section 13 of the principal Act.

5.4.10 The Ministry of Home Affairs also dwelt upon the deliberation of Attorney General for India given before this Committee on the 12th April, 2016 which runs as under:

"If a property is vested, it is vested free from all encumbrances in the Government, the Government becomes the owner. Then, the Government deals with it in the manner it desires. So, there is no question of any succession whatsoever."

5.4.11 On the issue of the property that was given as mehr during the time of marriage, the Home Secretary clarified that whatever can be proved to be not enemy property will be exempt from the provisions of the Act. However, mere hearsay constructed *post facto* cannot protect a property from being an enemy property. Therefore, if there is substantial proof that something was given in mehr to the wife and the husband left the country but wife remained,

then, of course, the Courts will uphold that proof. Nevertheless, the Home Secretary assured the Committee that if a person was not an enemy and he or she could prove his or her ownership of the property then it is not touchable under this Act. However, the two conditions that need to be fulfilled are, that the person not an enemy and the property has to be his/her. He also assured the Committee that the Ministry was well aware of the legal position that custom and usage was also provable. For this he gave the example of Hindu Marriage. A Hindu Marriage done by a saptapadi system may not be recorded as marriage. One's parents' marriage may not be recorded but it is a provable fact that they were married. So, it is a provable fact that that property belongs to 'X' person or 'X' woman or 'Y' woman. If that fact is provable and she is not an enemy, then obviously nothing in this Act can touch it.

5.4.12 The Ministry of Home Affairs, therefore, maintained that an heir can only get what the father had. If the father did not have the property and it was vested with the Custodian, then the legal heir cannot get a better title.

Recommendation

5.4.13 This Clause has been Adopted with no Change.

Clause 6

5.5.1 This clause seeks to substitute section 6 of the Act relating to "prohibition to transfer any property vested in custodian by an enemy, enemy subject or enemy firm". Sub-section (1) of the said section seeks to provide that no enemy or enemy subject or enemy firm shall have any right and shall never be deemed to have any right to transfer any property vested in the Custodian under this Act, whether before or after the commencement of this Act and any transfer of such property shall be void and shall always be deemed to have been void.

5.5.2 Sub-section (2) of the said section seeks to provide that where any property vested in the Custodian under this Act had been transferred, before the commencement of the Enemy Property (Amendment and Validation) Act, 2016, by an enemy or enemy subject or enemy firm and such transfer has been declared, by an order, made by the Central Government, to be void, and the property had been vested or deemed to have been vested in the Custodian [by virtue of the said order made under section 6, as it stood before its substitution by section 6 of the Enemy Property (Amendment and Validation) Act, 2016] such property shall, notwithstanding anything contained in any judgment, decree or order of any court, tribunal or other authority, continue to vest or be deemed to have been vested in the Custodian and no person (including an enemy or enemy subject or enemy firm) shall have any right or deemed to have any right (including all rights, titles and interests or any benefit arising out of such property) over the said property vested or deemed to have been vested in the Custodian.

5.5.3 The aforesaid amendments have been proposed on and from the date of the commencement of the Enemy Property Act, 1968.

Views of Members:

5.5.4 Shri K Rahman Khan and Shri P. L. Punia suggested the amendments:

- (1) On page 3, in clause 6, the newly inserted Sections 6(1) and 6(2) may be deleted.
- (2) On page 3, in clause 6, the following Explanation to section 6 of the original Act may be inserted

"Explanation -for the removal of doubts, it is hereby declared that for the purposes of this section, the transfer of any enemy property shall not include any transfer or any claim of transfer made

- (a) through oral will or oral gift; or*
- (b) by concealment of enemy nationality; or*

- (c) *in case the transfer of such property requires the permission of the Reserve Bank of India or any other competent authority, without such permission; or*
- (d) *without the permission of Custodian”*

5.5.5 Shri Husain Dalwai argued that because the intention of the 2016 Bill is to make the vesting of the enemy property in the Custodian permanent, the Bill seeks to nullify all transfers made so far, even though such transfers would have been legitimate when they were made. The Bill also seeks to nullify any judgment, decree or order of any Court which would have affected any order of Central Government declaring any transfer to be void. Again, the intention of the Bill is to unsettle settled matters and to retrospectively invalidate legitimate actions. For this reason the said Member was of the view that this clause cannot be sustained and must be withdrawn.

Views of the Government

5.5.6 Replying to the amendments moved by the Members, the Ministry of Home Affairs pointed out the observation of Attorney general for India that “...when you purchase any property, you are supposed to have a proper and diligent search done. If you buy someone’s property which is not his....you will be responsible.”

5.5.7 The Ministry of Home Affairs further reasoned that transfer of enemy property by Custodian with prior approval of the Central Government is valid but transfer by any enemy, enemy subject or enemy firm is void.

5.5.8 The Home Secretary replied that the Government was replacing the Section 6 of the Principal Act with substantive section 6 in the current Bill which says that “No enemy or enemy subject or enemy firm shall have any right and shall never be deemed to have any right to transfer any property vested in the custodian...” He argued that this was a more specific Section substantively talking about rights of transfer. So, there is a difference of quality between the two Sections.

Recommendation

5.5.9 This clause has been adopted with no change.

Clause 7

5.6.1 Sub-clause (1) of said clause seeks to substitute sub-section (1) of section 8 of the Act, on and from the date of commencement of the Enemy Property Act, 1968, to provide that with respect to the property vested in the Custodian under this Act, the Custodian may take or authorise the taking of such measures as he considers necessary or expedient for preserving such property till it is disposed of in accordance with the provisions of this Act.

5.6.2 Sub-clause (2) of said clause seeks to amend sub-section (2) of said section to empower the custodian in the following matters also i.e.,—

- (i) to fix and collect the rent, standard rent, lease rent, licence fee or usage charges, as the case may be, in respect of enemy property;
- (ii) to secure vacant possession of the enemy property by evicting the unauthorised or illegal occupant or trespasser and remove unauthorised or illegal constructions, if any.

Views of Members:

5.6.3 Shri K. Rahman Khan and Shri P.L. Punia also registered their objection on the provision that allowed eviction of all unauthorized occupants by the Custodian. Shri Hussain Dalwai also in his written views suggested removal of this clause.

Views of the Government

5.6.4 The Ministry quoted the view of Attorney General for India that “...preservation is a temporary or an interim phase. It has to end somewhere, either it has to be given back or

it has to be taken away, you can't continue with this temporary phase....(Government) can either use it for itself or it can sell it also or transfer it.”

Recommendation

5.6.5 This clause has been adopted with no change.

Clause 8

5.7.1 This clause seeks to insert a new section 8A in the Act relating to “sale of property by Custodian”.

5.7.2 Sub-section (1) of the said section seeks to provide that notwithstanding anything contained in any judgment, decree or order of any court, tribunal or other authority or any law for the time being in force, the Custodian may, within such time as may be specified by the Central Government in this behalf, dispose of whether by sale or otherwise, as the case may be, with prior approval of the Central Government, by general or special order, enemy properties vested in him immediately before the date of commencement of the Enemy Property (Amendment and Validation) Act, 2016 in accordance with the provisions of this Act, as amended by the Enemy Property (Amendment and Validation) Act, 2016.

5.7.3 Sub-section (2) of the said section seeks to provide that the Custodian may, for the purpose of disposal of enemy property under sub-section (1), make requisition of the services of any police officer to assist him and it shall be the duty of such officer to comply with such requisition.

5.7.4 Sub-section (3) of the said section seeks to provide that the Custodian shall, on disposal of enemy property under sub-section (1) immediately deposit the sale proceeds into the Consolidated Fund of India and intimate details thereof to the Central Government.

5.7.5 Sub-section (4) of the said section seeks to provide that the Custodian shall send a report to the Central Government at such intervals, as it may specify, for the enemy properties disposed of under sub-section (1), containing such details, (including the price for which such property has been sold and the particulars of the buyer to whom the properties have been sold or disposed of and the details of the proceeds of sale or disposal deposited into the Consolidated Fund of India) as it may specify.

5.7.6 Sub-section (5) of the said section seeks to provide that the Central Government may, by general or special order, issue such directions to the Custodian on the matters relating to disposal of enemy property under sub-section (1) and such directions shall be binding upon the Custodian and the buyer of the enemy properties referred to in that sub-section and other persons connected to such sale or disposal.

5.7.7 Sub-section (6) of this clause see the said section seeks to provide that the Central Government may, by general or special order, make such guidelines for disposal of enemy property under sub-section (1).

5.7.8 Sub-section (7) of the said section seeks to provide that notwithstanding anything contained in this section, the Central Government may direct that disposal of enemy property under sub-section (1) shall be made by any other authority or Ministry or Department instead of Custodian and in that case all the provisions of this section shall apply to such authority or Ministry or Department in respect of disposal of enemy property under sub-section (1).

5.7.9 Sub-section (8) of the said section seeks to provide that notwithstanding anything contained in sub-sections (1) to (7), the Central Government may deal with or utilise the enemy property in such manner as it may deem fit.

Views of Members:

5.7.10 Shri K. Rahman Khan and Shri P.L. Punia moved the amendment that on page 4, after line 10 the newly added section 8A may be deleted. Shri Hussain Dalwai suggested in the written views that the clause must be withdrawn.

Views of the Government

5.7.11 The Ministry of Home Affairs responding to the suggested amendment submitted that the disposal of enemy properties in a time bound manner has been recommended by the Department related parliamentary Standing Committee in the year 2011. The Ministry also quoted the view of Attorney General for India that "...preservation is a temporary or an interim phase. It has to end somewhere, either it has to be given back or it has to be taken away, you can't continue with this temporary phase....(Government) can either use it for itself or it can sell it also or transfer it.

5.7.12 Further, the Ministry of Home Affairs added that Sub-section (6) to section 8A provides the Central Government to make guidelines for the disposal of enemy properties under sub-section (1). The Central Government will make the Rules/ guidelines in consultation with the Law Ministry and Ld. AG after the Bill is passed by the Parliament.

Recommendation

5.7.13 This clause has been adopted with no change.

Clause 9

5.8.1 This clause seeks to insert a new section 10A in the Act relating to "power to issue certificate of sale".

5.8.2 Sub-section (1) of the said section seeks to provide that where the Custodian proposes to sell any enemy immovable property vested in him, to any person, he may on receipt of the sale proceeds of such property, issue a certificate of sale in favour of such person and such certificate of sale shall, notwithstanding the fact that the original title deeds of the property have not been handed over to the transferee, be valid and conclusive proof of ownership of such property by such person.

5.8.3 Sub-section (2) of the said section seeks to provide that notwithstanding anything contained in any law for the time being in force, the certificate of sale, referred to in sub-section (1), issued by the Custodian shall be a valid instrument for the registration of the property in favour of the transferee and the registration in respect of enemy property for which such certificate of sale had been issued by the Custodian, shall not be refused on the ground of lack of original title deeds in respect of such property or for any such other reason.

Recommendation

5.8.4 This clause has been adopted with no change.

Clause 10

5.9.1 This clause seeks to insert a new sub-section in section 11 of the Act so as to provide that the Custodian, Deputy Custodian or Assistant Custodian shall have, for the purposes of exercising powers or discharging his functions under this Act, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908, while dealing with any case under this Act, in respect of the following matters, namely:— (a) requiring the discovery and inspection of documents; (b) enforcing the attendance of any person, including any officer dealing with land, revenue and registration matters, banking officer or officer of a company and examining him on oath; (c) compelling the production of books, documents and other records; and (d) issuing commissions for the examination of witnesses or documents.

Recommendation

5.9.2 This clause has been adopted with no change.

Clause 11

5.10.1 This clause seeks to amend section 17 of the Act relating to levy of fee so as to increase the fee that shall be levied by the Custodian from two per centum to five per centum.

Recommendation**5.10.2 This clause has been adopted with no change.****Clause 12**

5.11.1 This clause seeks to substitute section 18 of the Act relating to “transfer of property vested as enemy property in certain cases” to provide that the Central Government may, on receipt of a representation from a person, aggrieved by an order vesting a property as enemy property in the Custodian within a period of thirty days from the date of receipt of such order and after giving a reasonable opportunity of being heard, if it is of the opinion that any enemy property vested in the Custodian under this Act and remaining with him was not an enemy property, it may by general or special order, direct the Custodian that such property vested as enemy property in the Custodian may be transferred to the person from whom such property was acquired and vested in the Custodian.

Views of the Government

5.11.2 The Ministry of Home Affairs proposed the following amendment in the proposed section 18 clause 12 of the Bill.

After the words “receipt of such order” the words “or from the date of its publication in the Official Gazette, whichever is earlier” may be added.

Recommendation**5.11.3 Subject to the above amendment, this clause has been adopted.****Clause 13**

5.12.1 This clause seeks to insert a new section 18A relating to “income not liable to be returned”.

5.12.2 The proposed new section seeks to provide that any income received in respect of the enemy property by the Custodian shall not, notwithstanding that such property had been transferred by way of sale under section 8A or section 18, as the case may be, to any other person, be returned or liable to be returned to such person or any other person.

5.12.3 The aforesaid amendments have been proposed on and from the date of the commencement of the Enemy Property Act, 1968.

5.12.4 This clause has been adopted with no change.

Clause 14

5.13.1 This clause seeks to insert a new section relating to “bar of jurisdiction of civil court”. The proposed new section seeks to provide that no civil court or other authority shall entertain any suit or other proceeding in respect of any property, subject matter of this Act as amended by the Enemy Property (Amendment and Validation) Act, 2016, or any action taken by the Central Government or the Custodian in this regard.

5.13.2 Some Members objected to this clause. The Committee felt that after the order given by the Custodian everyone should have the right to approach High Court on first appeal. Accordingly, the Ministry of Home Affairs, in consultation with Ministry of Law and Justice has proposed the following amendments.

5.13.3 Clause 14 may be substituted by the following:

“14. After section 18A of the principal Act, (as so inserted by section 13 of this Act), the following sections shall be inserted, namely:

18B. Exclusion of jurisdiction of civil courts. – Save as otherwise provided in this Act, no civil court or authority shall have jurisdiction to entertain any suit or proceedings in respect of any property, subject-matter of this Act, as amended by the Enemy Property (Amendment and Validation) Act, 2016, or any action taken by the Central Government or the Custodian in this regard.

18C. Any person aggrieved by an order of the Central Government under section 18 of this Act, may, within a period of sixty days from the date of communication or receipt of the order, file an appeal to the High Court on any question of fact of law arising out of such orders, and upon such appeal the High Court may, after hearing the parties, pass such orders thereon as it thinks proper:

Provided that the High Court may, if it is satisfied that the appellant was prevented by sufficient cause from filing an appeal within the said period, allow it to be filed within a further period not exceeding sixty days.

Explanation. – In this section, “High Court” means the High Court of a State or Union territory in which the property referred to in section 18 is situated.”.

Recommendation

5.13.4 The Committee approved the above amendments and adopted the Clause 14 as amended.

Clause 15

5.14.1 This clause seeks to amend section 20 of the Act relating to “penalty” so as to increase the penalty to be imposed against a person who fails to comply with a requisition made by the custodian under sub-section (1) or sub-section (2) of section 11, or who fails to submit the return under sub-section (2) of section 15, from five hundred rupees to ten thousand rupees.

Recommendation

5.14.2 This clause has been adopted with no change.

Clause 16

5.15.1 This clause seeks to amend section 22 of the Act so as to insert the brackets and words “including any law of succession or any custom or usage in relation to succession of property”, after the words “any other law for the time being in force”. The said amendment is consequential in the light of insertion of new section 5B.

5.15.2 The aforesaid amendments have been proposed on and from the date of the commencement of the Enemy Property Act, 1968.

Recommendation

5.15.3 This clause has been adopted with no change.

Clause 17

5.16.1 This clause seeks to insert a new section 22A relating to “validation” with effect from the 2nd July, 2010 so as to provide that notwithstanding anything contained in any judgment, decree or order of any court, tribunal or other authority,

- (a) the provisions of this Act, as amended by the Enemy Property (Amendment and Validation) Act, 2016, shall have and shall always be deemed to have effect for all purposes as if the provisions of this Act, as amended by the said Act, had been in force at all material times;
- (b) any enemy property divested from the Custodian to any person under the provisions of this Act, as it stood immediately before the commencement of the Enemy Property (Amendment and Validation) Act, 2016, shall stand transferred to and vest or continue to vest, free from all encumbrances, in the Custodian in the same manner as it was vested in the Custodian before such divesting of enemy property under the provisions of this Act, as if the provisions of this Act, as amended by the aforesaid Act, were in force at all material times;
- (c) no suit or other proceedings shall, without prejudice to the generality of the foregoing provisions, be maintained or continued in any court or tribunal or

authority for the enforcement of any decree or order or direction given by such court or tribunal or authority directing divestment of enemy property from the Custodian vested in him under section 5 of this Act, as it stood before the commencement of the Enemy Property (Amendment and Validation) Act, 2016, and such enemy property shall continue to vest in the Custodian under section 5 of this Act, as amended by the aforesaid Act, as the said section, as amended by the aforesaid Act was in force at all material times;

- (d) any transfer of any enemy property, vested in the Custodian, by virtue of any order of attachment, seizure or sale in execution of decree of a civil court or orders of any tribunal or other authority in respect of enemy property vested in the Custodian which is contrary to the provisions of this Act, as amended by the Enemy Property (Amendment and Validation) Act, 2016, shall be deemed to be null and void and notwithstanding such transfer, continue to vest in the Custodian under this Act.”.

Views of Members:

5.16.2 Shri K. Rahman Khan and Shri P. L. Punia also argued during the clause-by-clause consideration that the Section 22A(c) may be deleted. They also moved the amendment that on page 6, after line 21, in clause 17 after section 22A (b) the following Proviso may be inserted:

“Provided that if the Central Government had, before the commencement of the Enemy Property (Amendment and Validation) Act, 2016, made any order under section 18 as it stood before such commencement, and the property had been returned to the owner or such other person, such property shall, notwithstanding anything contained in this section, continue to vest in the owner or such other person, as the case may be;

Provided further that if any enemy property had been otherwise divested from the Custodian (by an order of a court or without any direction under section 18) and/or returned to the owner or his lawful heir before the commencement of the Enemy Property (Amendment and validation) Act, 2016, such property shall, notwithstanding anything contained in this section, continue to vest in the owner or such other person, as the case may be.”

Shri Husain Dalwai objecting to the clause, in his written views felt that the proposed section 22A(c) cannot be sustained at all. He, however, suggested that if the government decides to set up a tribunal to handle cases under this Act, then all pending cases can be transferred to such Tribunal.

Views of Government:

5.16.3 The Ministry of Home Affairs responded to the Members’ amendments by reasoning that articles 245, 246 and 248 of the Constitution of India confer the power of making laws to Parliament and the State Legislature. This power includes the power to give a law, retrospective effect. There are several examples where retrospective effect has been given to legislations.

5.16.4 The Ministry of Home Affairs pointed out the submission of Attorney General on this matter “.....this is also a validation Act to get over the Judgment of the Supreme Court. As you know, Parliament does not have the power to overrule a Judgment, but it certainly has power to remove the basis of the Judgment.....Parliament has full power to make a law retrospectively. So, this is the retrospective operation.”

5.16.5 The Ministry of Home Affairs further quoted the views of Shri Rajiv Luthra, an expert invited by the Select Committee, who observed that “.....a court’s decision must always bind unless the conditions on which it is based are so fundamentally altered that the decision could not have been given in the altered circumstances..... proposed amendments

under the 2016 bill seek to fundamentally alter the conditions on which thepronouncement (Raja MAM Khan case) was rendered. Further, the amendments are pointed and arguably, the decision could not have been given in the altered circumstances *i.e.* if the proposed amendments had been in force on the date of the said pronouncement. The amendments to sections in questions are all in the nature of deeming provisions and propose to retrospectively amend the law as well as the foundation of the pronouncement of the Hon'ble Supreme court. The same is a valid exercise of power. As such, the proposed amendments are likely to survive any constitutional challenge on this ground."

5.16.6 In effect, the Ministry of Home Affairs concluded that the Parliament is well within its mandate to make a law while giving retrospective effect to it and while the Parliament may not be able to overrule judgement of the court but it can, nevertheless, remove the basis of that judgement through a retrospective legislation.

Recommendation

5.16.7 This clause has been adopted with no change.

Clause 18

5.17.1 This clause seeks to amend section 23 of the Act relating to power to make rules. The said amendment is consequential in nature.

Recommendation

5.17.2 This clause has been adopted with no change.

Clause 19

5.18.1 This clause is with respect to "power to remove difficulties". Sub-section(1) of this section(section 19) seeks to provide that if any difficulty arises in giving effect to the provisions of the principal Act, as amended by the Enemy Property (Amendment and Validation) Act, 2016, the Central Government may, by order, published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act, as amended by the Enemy Property (Amendment and Validation) Act, 2016, or the Public Premises (Eviction of Unauthorised Occupants) Act, 1971, as amended by the Enemy Property (Amendment and Validation) Act, 2016, as may appear to be necessary for removing the difficulty. However that no such order shall be made under this section after the expiry of two years from the date on which the Bill replacing the Enemy Property (Amendment and Validation) Ordinance, 2016, receives the assent of the President. Sub-clause (2) of this section seeks to provide that every order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament.

Recommendation

5.18.2 This clause has been adopted with no change.

Clause 20

5.19.1 This clause seeks to amend sections 2 and 3 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971. Sub-clause (a) of this clause seeks to amend section 2 of the said Act so as to insert a new sub-clause (4) in section 2 of the said Act to include any premises of enemy property as defined in clause (c) of section 2 of the Enemy Property Act, 1968. The said amendment is consequential in nature.

5.19.2 Sub-clause (b) of said clause seeks to amend section 3 of the said Act so as to declare the custodian, Deputy Custodian and Assistant Custodian of enemy Property appointed under the enemy Property Act, 1968 as "Estate Officer" in respect of the enemy properties.

Recommendation

5.19.3 This clause has been adopted with no change.

Clause 21

5.20.1 This clause is with respect to savings of the actions done during the course of Enemy Property (Amendment and Validation) Ordinance, 2010. This clause seeks to provide that notwithstanding the cessation of the operation of the Enemy Property (Amendment and Validation) Ordinance, 2010, anything done or any action taken under the Enemy Property Act, 1968, or the Public Premises (Eviction of Unauthorised Occupants) Act, 1971, as amended by the Enemy Property (Amendment and Validation) Ordinance, 2010, shall be deemed to have been done or taken under the corresponding provisions of those Acts, as amended by the Enemy Property (Amendment and Validation) Ordinance, 2010, as if the provisions of this Act, as amended by the said Ordinance had been in force at all material times.

Recommendation

5.20.2 This clause has been adopted with no change.

Clause 22

5.21.1 This clause seeks to validate and save the actions done or directions given under the Enemy Property (Amendment and Validation) Ordinance, 2016.

Recommendation

5.21.2 This clause has been adopted with no change.

Clause 1: Short Title and Commencement

5.22.1 This clause provides for short title and commencement of the Enemy Property (Amendment and Validation) Bill, 2016.

Recommendation

5.22.2 This clause has been adopted with no change.

THE ENEMY PROPERTY (AMENDMENT AND VALIDATION)
BILL, 2016

(AS REPORTED BY THE SELECT COMMITTEE)

[Words and figures underlined indicate the amendments and (***) mark indicates the omission suggested by the Select Committee]

THE ENEMY PROPERTY (AMENDMENT AND VALIDATION)
BILL, 2016

A

BILL

further to amend the Enemy Property Act, 1968 and the Public Premises (Eviction of Unauthorised Occupants) Act, 1971.

BE it enacted by Parliament in the Sixty-seventh Year of the Republic of India as follows:—

1. (1) This Act may be called the Enemy Property (Amendment and Validation) Act, 2016.

Short title and commencement.

(2) Save as otherwise provided in this Act, it shall be deemed to have come into force on the 7th day of January, 2016.

34 of 1968.

2. On and from the date of commencement of the Enemy Property Act, 1968 (hereinafter referred to as the principal Act), in section 2,—

Amendment of section 2.

(i) in clause (b),—

(I) for the words "an enemy subject", the words "an enemy subject including his legal heir and successor whether or not a citizen of India or the citizen of a country which is not an enemy or the enemy, enemy subject or his legal heir and successor who has changed his nationality" shall be substituted and shall always be deemed to have been substituted;

(II) for the words "an enemy firm", the words "an enemy firm, including its succeeding firm whether or not partners or members of such succeeding firm are citizens of India or citizens of a country which is not an enemy or such firm which has changed its nationality" shall be substituted and shall always be deemed to have been substituted;

(III) for the words "does not include a citizen of India", the words "does not include a citizen of India other than those citizens of India", being the legal heir and successor of the "enemy" or "enemy subject" or "enemy firm" shall be substituted and shall always be deemed to have been substituted;

(IV) the following Explanations shall be inserted and shall always be deemed to have been inserted at the end, namely:—

'Explanation 1.—For the purposes of this clause, the expression "does not include a citizen of India" shall exclude and shall always be deemed to have been excluded those citizens of India, who are or have been the legal heir and

successor of an "enemy" or an "enemy subject" or an "enemy firm" which or who has ceased to be an enemy due to death, extinction, winding up of business or change of nationality or that the legal heir and successor is a citizen of India or the citizen of a country which is not an enemy.

Explanation 2.—For the purposes of this clause, it is hereby clarified that nothing contained in this Act shall affect any right of the legal heir and successor referred to in this clause (not being inconsistent to the provisions of this Act) which have been conferred upon him under any other law for the time being in force.';

(ii) in clause (c), in the proviso,—

(I) after the words "dies in the territories to which this Act extends", the words "or dies in any territory outside India" shall be inserted and shall always be deemed to have been inserted;

(II) the following Explanations shall be inserted and shall always be deemed to have been inserted at the end, namely:—

'Explanation 1.—For the purposes of this clause, it is hereby clarified that "enemy property" shall, notwithstanding that the enemy or the enemy subject or the enemy firm has ceased to be an enemy due to death, extinction, winding up of business or change of nationality or that the legal heir and successor is a citizen of India or the citizen of a country which is not an enemy, continue and always be deemed to be continued as an enemy property.

Explanation 2.—For the purposes of this clause, the expression "enemy property" shall mean and include and shall be deemed to have always meant and included all rights, titles and interest in, or any benefit arising out of, such property.'.

Amendment
of section 5.

3. On and from the date of commencement of the principal Act, in section 5, after sub-section (2), the following shall be inserted, and shall always be deemed to have been inserted, namely:—

'(3) The enemy property vested in the Custodian shall, notwithstanding that the enemy or the enemy subject or the enemy firm has ceased to be an enemy due to death, extinction, winding up of business or change of nationality or that the legal heir and successor is a citizen of India or the citizen of a country which is not an enemy, continue to remain, save as otherwise provided in this Act, vested in the Custodian.

Explanation.—For the purposes of this sub-section, "enemy property vested in the Custodian" shall include and shall always be deemed to have been included all rights, titles, and interest in, or any benefit arising out of, such property vested in him under this Act.'.

Insertion of
new section
5A.

4. After section 5 of the principal Act, the following section shall be inserted, namely:—

Issue of
certificate by
Custodian.

"5A. The Custodian may, after making such inquiry as he deems necessary, by order, declare that the property of the enemy or the enemy subject or the enemy firm described in the order, vests in him under this Act and issue a certificate to this effect and such certificate shall be the evidence of the facts stated therein."

Insertion of
new section
5B.

5. On and from the date of commencement of the principal Act, after section 5A (as so inserted by section 4 of this Act), the following shall be inserted and shall always be deemed to have been inserted, namely:—

'5B. Nothing contained in any law for the time being in force relating to succession or any custom or usage governing succession of property shall apply in relation to the enemy property under this Act and no person (including his legal heir and successor) shall have any right and shall be deemed not to have any right (including all rights, titles and interests or any benefit arising out of such property) in relation to such enemy property.

Law of succession or any custom or usage not to apply to enemy property.

Explanation.—For the purposes of this section, the expressions "custom" and "usage" signify any rule which, having been continuously and uniformly observed for a long time, has obtained the force of law in the matters of succession of property.'

6. On and from the date of commencement of the principal Act, for section 6 of the principal Act, the following section shall be substituted and shall always be deemed to have been substituted, namely:—

Amendment of section 6.

"6. (1) No enemy or enemy subject or enemy firm shall have any right and shall never be deemed to have any right to transfer any property vested in the Custodian under this Act, whether before or after the commencement of this Act and any transfer of such property shall be void and shall always be deemed to have been void.

Prohibition to transfer any property vested in Custodian by an enemy, enemy subject or enemy firm.

(2) Where any property vested in the Custodian under this Act had been transferred, before the commencement of the Enemy Property (Amendment and Validation) Act, 2016, by an enemy or enemy subject or enemy firm and such transfer has been declared, by an order, made by the Central Government, to be void, and the property had been vested or deemed to have been vested in the Custodian [by virtue of the said order made under section 6, as it stood before its substitution by section 6 of the Enemy Property (Amendment and Validation) Act, 2016] such property shall, notwithstanding anything contained in any judgment, decree or order of any court, tribunal or other authority, continue to vest or be deemed to have been vested in the Custodian and no person (including an enemy or enemy subject or enemy firm) shall have any right or deemed to have any right (including all rights, titles and interests or any benefit arising out of such property) over the said property vested or deemed to have been vested in the Custodian."

7. In section 8 of the principal Act,—

Amendment of section 8.

(i) On and from the date of commencement of the principal Act, for sub-section (1), the following sub-section shall be substituted and shall always be deemed to have been substituted, namely:—

"(1) With respect to the property vested in the Custodian under this Act, the Custodian may take or authorise the taking of such measures as he considers necessary or expedient for preserving such property till it is disposed of in accordance with the provisions of this Act.";

(ii) in sub-section (2),—

(a) after clause (i), the following clause shall be inserted, namely:—

'(ia) fix and collect the rent, standard rent, lease rent, licence fee or usage charges, as the case may be, in respect of enemy property;

(b) after clause (iv), the following clause shall be inserted, namely:—

"(iva) secure vacant possession of the enemy property by evicting the unauthorised or illegal occupant or trespasser and remove unauthorised or illegal constructions, if any.'".

8. After section 8 of the principal Act, the following section shall be inserted, namely:—

Insertion of new section 8A.

Sale of
property by
Custodian.

"8A.(1) Notwithstanding anything contained in any judgment, decree or order of any court, tribunal or other authority or any law for the time being in force, the Custodian may, within such time as may be specified by the Central Government in this behalf, dispose of whether by sale or otherwise, as the case may be, with prior approval of the Central Government, by general or special order, enemy properties vested in him immediately before the date of commencement of the Enemy Property (Amendment and Validation) Act, 2016 in accordance with the provisions of this Act, as amended by the Enemy Property (Amendment and Validation) Act, 2016.

(2) The Custodian may, for the purpose of disposal of enemy property under sub-section (1), make requisition of the services of any police officer to assist him and it shall be the duty of such officer to comply with such requisition.

(3) The Custodian shall, on disposal of enemy property under sub-section (1) immediately deposit the sale proceeds into the Consolidated Fund of India and intimate details thereof to the Central Government.

(4) The Custodian shall send a report to the Central Government at such intervals, as it may specify, for the enemy properties disposed of under sub-section (1), containing such details, (including the price for which such property has been sold and the particulars of the buyer to whom the properties have been sold or disposed of and the details of the proceeds of sale or disposal deposited into the Consolidated Fund of India) as it may specify.

(5) The Central Government may, by general or special order, issue such directions to the Custodian on the matters relating to disposal of enemy property under sub-section (1) and such directions shall be binding upon the Custodian and the buyer of the enemy properties referred to in that sub-section and other persons connected to such sale or disposal.

(6) The Central Government may, by general or special order, make such guidelines for disposal of enemy property under sub-section (1).

(7) Notwithstanding anything contained in this section, the Central Government may direct that disposal of enemy property under sub-section (1) shall be made by any other authority or Ministry or Department instead of Custodian and in that case all the provisions of this section shall apply to such authority or Ministry or Department in respect of disposal of enemy property under sub-section (1).

(8) Notwithstanding anything contained in sub-sections (1) to (7), the Central Government may deal with or utilise the enemy property in such manner as it may deem fit."

Insertion of
new section
10A.

9. After section 10 of the principal Act, the following section shall be inserted, namely:—

Power to issue
certificate of
sale.

"10A.(1) Where the Custodian proposes to sell any enemy immovable property vested in him, to any person, he may on receipt of the sale proceeds of such property, issue a certificate of sale in favour of such person and such certificate of sale shall, notwithstanding the fact that the original title deeds of the property have not been handed over to the transferee, be valid and conclusive proof of ownership of such property by such person.

(2) Notwithstanding anything contained in any law for the time being in force, the certificate of sale, referred to in sub-section (1), issued by the Custodian shall be a valid instrument for the registration of the property in favour of the transferee and the registration in respect of enemy property for which such certificate of sale had been issued by the Custodian, shall not be refused on the ground of lack of original title deeds in respect of such property or for any such other reason."

10. In section 11 of the principal Act, after sub-section (2), the following sub-section shall be inserted, namely:—

Amendment
of section 11.

5 of 1908.

"(3) The Custodian, Deputy Custodian or Assistant Custodian shall have, for the purposes of exercising powers or discharging his functions under this Act, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908, while dealing with any case under this Act, in respect of the following matters, namely:—

(a) requiring the discovery and inspection of documents;

(b) enforcing the attendance of any person, including any officer dealing with land, revenue and registration matters, banking officer or officer of a company and examining him on oath;

(c) compelling the production of books, documents and other records;
and

(d) issuing commissions for the examination of witnesses or documents."

11. In section 17 of the principal Act, in sub-section (1), for the words "two per centum", at both the places where they occur, the words "five per centum" shall be substituted.

Amendment
of section 17.

12. For section 18 of the principal Act, the following section shall be substituted, namely:—

Substitution
of new
section for
section 18.

"18. The Central Government may, on receipt of a representation from a person, aggrieved by an order vesting a property as enemy property in the Custodian within a period of thirty days from the date of receipt of such order or from the date of its publication in the Official Gazette, whichever is earlier and after giving a reasonable opportunity of being heard, if it is of the opinion that any enemy property vested in the Custodian under this Act and remaining with him was not an enemy property, it may by general or special order, direct the Custodian that such property vested as enemy property in the Custodian may be transferred to the person from whom such property was acquired and vested in the Custodian."

Transfer of
property
vested as
enemy
property in
certain cases.

13. On and from the date of commencement of the principal Act, after section 18 [as so substituted by section 12 of this Act], the following section shall be inserted and shall always be deemed to have been inserted, namely:—

Insertion of
new
section 18A.

"18A. Any income received in respect of the enemy property by the Custodian shall not, notwithstanding that such property had been transferred by way of sale under section 8A or section 18, as the case may be, to any other person, be returned or liable to be returned to such person or any other person."

Income not
liable to be
returned.

14. After section 18A of the principal Act, (as so inserted by section 13 of this Act), the following sections shall be inserted, namely:—

Insertion of
new sections
18B and 18C.

"18B. Save as otherwise provided in this Act, no civil court or (***) authority shall have jurisdiction to entertain any suit or (***) proceedings in respect of any property, subject matter of this Act, as amended by the Enemy Property (Amendment and Validation) Act, 2016, or any action taken by the Central Government or the Custodian in this regard.

Exclusion of
jurisdiction of
civil courts.

18C. Any person aggrieved by an order of the Central Government under section 18 of this Act, may, within a period of sixty days from the date of communication or receipt of the order, file an appeal to the High Court on any question of fact or law arising out of such orders, and upon such appeal the High Court may, after hearing the parties, pass such orders thereon as it thinks proper:

Appeal to
High Court.

Provided that the High Court may, if it is satisfied that the appellant was prevented by sufficient cause from filing an appeal within the said period, allow it to be filed

within a further period not exceeding sixty days.

Explanation.—In this section, "High Court" means the High Court of a State or Union territory in which the property referred to in section 18 is situated."

Amendment
of section 20.

15. In section 20 of the principal Act, for the words "five hundred rupees" at both the places where they occur, the words "ten thousand rupees" shall be substituted.

Amendment
of section 22.

16. On and from the date of commencement of the principal Act, in section 22 of the principal Act, after the words "for the time being in force", the brackets and words "(including any law of succession or any custom or usage in relation to succession of property)" shall be inserted and shall always be deemed to have been inserted.

Insertion of
new section
22A.

17. After section 22 of the principal Act, the following section shall be inserted and shall always be deemed to have been inserted with effect from the 2nd July, 2010, namely:—

Validation.

"22A. Notwithstanding anything contained in any judgment, decree or order of any court, tribunal or other authority,—

(a) the provisions of this Act, as amended by the Enemy Property (Amendment and Validation) Act, 2016, shall have and shall always be deemed to have effect for all purposes as if the provisions of this Act, as amended by the said Act, had been in force at all material times;

(b) any enemy property divested from the Custodian to any person under the provisions of this Act, as it stood immediately before the commencement of the Enemy Property (Amendment and Validation) Act, 2016, shall stand transferred to and vest or continue to vest, free from all encumbrances, in the Custodian in the same manner as it was vested in the Custodian before such divesting of enemy property under the provisions of this Act, as if the provisions of this Act, as amended by the aforesaid Act, were in force at all material times;

(c) no suit or other proceedings shall, without prejudice to the generality of the foregoing provisions, be maintained or continued in any court or tribunal or authority for the enforcement of any decree or order or direction given by such court or tribunal or authority directing divestment of enemy property from the Custodian vested in him under section 5 of this Act, as it stood before the commencement of the Enemy Property (Amendment and Validation) Act, 2016, and such enemy property shall continue to vest in the Custodian under section 5 of this Act, as amended by the aforesaid Act, as the said section, as amended by the aforesaid Act was in force at all material times;

(d) any transfer of any enemy property, vested in the Custodian, by virtue of any order of attachment, seizure or sale in execution of decree of a civil court or orders of any tribunal or other authority in respect of enemy property vested in the Custodian which is contrary to the provisions of this Act, as amended by the Enemy Property (Amendment and Validation) Act, 2016, shall be deemed to be null and void and notwithstanding such transfer, continue to vest in the Custodian under this Act."

Amendment
of section 23.

18. In section 23 of the principal Act, in sub-section (2), clause (d) shall be omitted.

Power to
removal of
difficulty.

19. (1) If any difficulty arises in giving effect to the provisions of the principal Act, as amended by the Enemy Property (Amendment and Validation) Act, 2016, the Central Government may, by order, published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act, as amended by the Enemy Property (Amendment and Validation) Act, 2016, or the Public Premises (Eviction of Unauthorised Occupants) Act, 1971, as amended by the Enemy Property (Amendment and Validation) Act, 2016, as may appear to be necessary for removing the difficulty:

Ord. 1 of 2016. Provided that no such order shall be made under this section after the expiry of two years from the date on which the Enemy Property (Amendment and Validation) Bill, 2016, replacing the Enemy Property (Amendment and Validation) Ordinance, 2016, receives the assent of the President.

(2) Every order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament.

20. In the Public Premises (Eviction of Unauthorised Occupants) Act, 1971,—

Amendment of sections 2 and 3 of Act 40 of 1971.

(a) in section 2, in clause (e), after sub-clause (3), the following sub-clause shall be inserted, namely:—

14 of 1968. "(4) any premises of the enemy property as defined in clause (c) of section 2 of the Enemy Property Act, 1968.";

(b) in section 3, in clause (a),—

(i) in the second proviso, the word "and" shall be omitted;

(ii) after the second proviso, the following proviso shall be inserted, namely:—

14 of 1968. "Provided also that the Custodian, Deputy Custodian and Assistant Custodian of the enemy property appointed under section 3 of the Enemy Property Act, 1968 shall be deemed to have been appointed as the Estate Officer in respect of those enemy property, being the public premises, referred to in sub-clause (4) of clause (e) of section 2 of this Act for which they had been appointed as the Custodian, Deputy Custodian and Assistant Custodian under section 3 of the Enemy Property Act, 1968."

Ord. 4 of 2010. 34 of 1968. 40 of 1971. **21.** Notwithstanding the cessation of the operation of the Enemy Property (Amendment and Validation) Ordinance, 2010, anything done or any action taken under the Enemy Property Act, 1968, or the Public Premises (Eviction of Unauthorised Occupants) Act, 1971, as amended by the Enemy Property (Amendment and Validation) Ordinance, 2010, shall be deemed to have been done or taken under the corresponding provisions of those Acts, as amended by the Enemy Property (Amendment and Validation) Ordinance, 2010, as if the provisions of this Act, as amended by the said Ordinance had been in force at all material times.

Savings.

Ord. 1 of 2016. **22.** Notwithstanding the fact the Enemy Property (Amendment and Validation) Ordinance, 2016 has ceased to operate, anything done or any action taken or any direction given under the said Ordinance shall be deemed to have been done or taken under the corresponding provisions of this Act as if such provisions had been in force at all material times.

Validation and savings.

Note of Dissent

K. C. TYAGI, MP
K. RAHMAN KHAN, MP
D. RAJA, MP
P. L. PUNIA, MP
HUSAIN DALWAI, MP
JAVED ALI KHAN, MP

In our considered view, the provisions of the present Bill violates the very basic Principle of Natural Justice, Human Rights and settled principles of law. Furthermore, it adversely affects and results in punishing lakhs of Indian Citizens and will have no effect on any Enemy Government.

On the perusal of the aforesaid, In my view the Enemy Property Act, 1968 (henceforth Act, 1968), is a very balanced piece of legislation as it recognized that the Enmity is not permanent, Indian citizens should not be deprived of their rights including inheritance, Succession, which is automatic, cannot be stopped by bringing in any legislation, which is settled law in India and across the Globe, The principle of Natural Justice must be upheld and that the Courts should have power to adjudicate on matters related to enemy property.

The provisions of the present Bill, 2016 are contrary to the aforesaid principles and if allowed to be inserted in the Act, 1968, not only the entire balance will be disturbed but also the same would not sustain in the Courts of law. Thus, we are submitting this dissent note with the request that the same may kindly be treated and circulated as part and parcel of the Report of this Committee.

This Bill does not follow the lines on which the provisions of The Enemy Property (Amendment and Validation) Second Bill 2010, which was introduced in Lok Sabha and referred to Standing committee. Further, the Bill seeks to insert certain provisions which totally violates article 14, 19, 300A of the constitution and is also against the principles of natural justice.

It may also be pointed out that since provisions of the 1968 Act, were very clear; the Indian Courts have also observed and declared that the vesting under the Act, 1968 is temporary in nature and is for the purpose of preservation, management and administration of properties in several judicial pronouncements right from the year 1969, some of which are Mohd. Zahir & Ors. v. Union of India, 1969 U.D. 436; Hamida Begum, alias Kishori Shaikh Alladutta v. M.K. Rangachari, Custodian, and Ors., decided on 17/18/25/25 February, 1975 by Bombay High Court; judgment of Division Bench of Bombay High Court dated 19.2.1979 in Union of India v. Hamida Begum, Special Appeal No. 108 of 1975; judgment of the Hon'ble Supreme Court dated 16.12.1992 in Ramniklal A. Shah v. Hamida Begum, Civil Appeal No. 4137 of 1986; Sudhendu Nath Banerjee v. Bhupati Charan Chakraborty, AIR 1976 Cal 267; Rameshwar Dayal v. Custodian of Enemy Property for India, 1986 (2) ARC 376; Buniyad Hussain v. Zila Adhikari, Barabanki, 1998 All. C.J. 1163; Shamim Ahmad v. Rashida Begum, 2001 All. C.J. 862; Dr. Saeed Ahmad v. Custodian of Enemy Property for India, 2007 (6) AWC 6015; 2007 All. C.J. 1671; Allahuddin v. Union of India, C.M. W.P. No. 14878 of 1985, decided on 20.11.2009; Chandra Madhab Sen v. Union of India, W.P. No. 15217 of 2007; Raja Mohammad Amir Mohammad Khan v. Custodian, (2002) 3 Bom.C.R. 663; and Union of India & Anr. V. Raja Mohammad Amir Mohammad Khan reported in 2005 (8) SCC 696.

These judgments reveal a consistent and unwavering approach to the interpretation and application of the Enemy Property Act, 1968. In fact, the Enemy Property (Amendment and Validation) Bill, 2010 maintained the said balance by not depriving Indian Citizens, honoring the concluded judgements of Courts and not taking away the powers of Courts.

In view of the above, I/WE suggest that following amendments should be made in the Enemy Property (Amendment and Validation) Bill, 2016.

**CLAUSES OF BILL,
2016**

PROPOSED AMENDMENTS

CLAUSE 2:

(i) (b) (I)	(I) (i) TO DELETE FROM CLAUSE (b) (I): “whether or not a citizen of India or the citizen of a country which is not an enemy or the enemy, enemy subject or his legal heir and successor who has changed his nationality”
	(ii) TO INSERT IN CLAUSE (b) (I) AFTER THE WORDS “LEGAL HEIR AND SUCCESSOR” “if the legal heir and successor is a citizen of a country which is an enemy at the time of death of an enemy subject”
(i) (b) (II)	(II) (i) TO DELETE FROM CLAUSE (b) (II): “whether or not partners or members of such succeeding firm are citizen of India or the citizen of a country which is not an enemy or such firm which has changed its nationality” (ii) TO INSERT IN CLAUSE (b) (II) AFTER THE WORDS “INCLUDING ITS SUCCEEDING FIRM” “if partners or members of such succeeding firm are citizen of a country which is an enemy.”
(i) (b) (III)	(III) TO INSERT IN CLAUSE (b) (III) AFTER THE WORDS “enemy” or “enemy subject” or “enemy firm” “who are citizen of a country which is an enemy at the time of succeeding the estate of enemy, enemy subject or enemy firm.”
(i) (b) (IV)	(IV) (i) TO DELETE EXPLANATION 1 FROM CLAUSE (b) (IV): (ii) TO RE-NUMBER EXPLANATION 2 AS “EXPLANATION”
(i) (c) (II)	(i) TO INSERT FOLLOWING IN CLAUSE (c) (II) AT THE END OF EXPLANATION 1: “till it is divested by Central Government in favour of its rightful owner or his/her/its legal heir or successor.” (ii) TO DELETE FOLLOWING WORDS FROM CLAUSE (c) EXPLANATION 2: “titles and interest in, or any benefit arising out of such property.” (iii) TO INSERT IN CLAUSE (c) EXPLANATION 2 AFTER THE WORDS “ALL RIGHTS,” “which are necessary or expedient for preserving such property.”
CLAUSE 3	(i) TO INSERT IN CLAUSE 3 FOLLOWING WORDS AT THE END OF PROPOSED SECTION (5) (3): “till it is divested by Central Government in favour of its rightful owner or his/her/its legal heir or successor.” (ii) TO DELETE FOLLOWING WORDS FROM CLAUSE 3 EXPLANATION: “titles and interest in, or any benefit arising out of such property vested in him under this Act.”

CLAUSES OF BILL, 2016	PROPOSED AMENDMENTS
	<p>(iii) TO INSERT IN CLAUSE (c) EXPLANATION 2 AFTER THE WORDS “ALL RIGHTS,”</p> <p>“which are necessary or expedient for preserving such property.”</p>
CLAUSE 5	<p>TO INSERT IN THE PROPOSED SECTION 5B FOLLOWING AFTER THE WORDS “IN RELATION TO ENEMY PROPERTY UNDER THIS ACT”:</p> <p>“if the legal heir or successor or partner, as the case may be, is a citizen of a country which is an enemy at the time of death, extinction, winding up of business”</p>
CLAUSE 6:	<p>(i) TO DELETE PROPOSED SUBSTITUTED SECTION 6 AND RETAIN THE ORIGINAL SECTION 6</p> <p>(ii) TO INSERT FOLLOWING EXPLANATION</p> <p>“On and from the date of commencement of the principal Act, in section 6, the following Explanation shall be inserted and shall be deemed to have been inserted, namely:—</p> <p>“Explanation.—For the removal of doubts, it is hereby declared that for the purposes of this section, the transfer of any enemy property shall include any transfer or any claim of transfer made,—</p> <p>(a) through oral will or oral gift; or</p> <p>(b) by concealment of enemy nationality; or</p> <p>(c) in case the transfer of such property requires the permission of the Reserve Bank of India or any other competent authority, without such permission; or</p> <p>(d) with or without the permission of the Custodian.”</p>
CLAUSE 7	<p>TO INSERT IN THE PROPOSED SECTION 8(1) FOLLOWING AFTER THE WORDS “SUCH PROPERTY TILL”:</p> <p>“ it is divested or”</p>
CLAUSE 8	<p>TO SUBSTITUTE THE FOLLOWING IN PLACE OF SUB-SECTION 8A (1):</p> <p>“8A. (1) The Central Government may sell an enemy property vested in the Custodian under this Act provided the following conditions are fulfilled:</p> <p>(i) The enemy property is remaining with the Custodian and not subject to any legal proceedings pending in any court, authority or tribunal;</p> <p>(ii) There is no order/judgment declaring that the property is not an enemy property and/or has been divested and/or returned to its owner or his/her legal heir or such person, who has been declared as the rightful person to get the property;</p> <p>(iii) A public notice of 120 days has been given in two widely circulated news papers intimating the decision of the Central Government to the general public that the Central Government</p>

**CLAUSES OF BILL,
2016**

PROPOSED AMENDMENTS

proposes to sell the property and to this public notice, no objection/claim is received within the stipulated period;

For removal of doubt, it is made clear that in case any objection/claim is so received, the Central Government shall not sell the property till the objection/claim is finally decided after giving an opportunity of hearing to the claimant by the Competent Court/Authority/Tribunal;

- (iv) The Central Government may assign, by general or special order, power to the Custodian to dispose of any enemy property whether by sale or otherwise, as the case may be subject to the conditions mentioned herein above.”

TO INSERT THE FOLLOWING AT THE END OF SUB-SECTION 8A (8):

“For removal of doubt, it is made clear that the power of the Central Government shall always be subject to the restrictions and conditions given herein above in Sub-Section (1).

CLAUSE 12

TO SUBSTITUTE:

- (i) For the words “within a period of thirty days from the date of receipt of such order” with the words “within a period of Ninety days from the date of receipt of such order or from the date when this amendment is passed, whichever is later”

TO ADD THE FOLLOWING AS SUB-SECTION (2) AT THE END OF SECTION 18:

“(2) The Central Government may, by general or special order, direct that any enemy property vested in the Custodian under this Act and remaining with him shall be divested from him and be returned, in such manner as may be prescribed, to the owner thereof or to such other person as may be specified in the direction and thereupon such property shall cease to vest in the Custodian and shall re-vest in such owner or other person.”

**CLAUSE 13
18A:**

TO SUBSTITUTE THE FOLLOWING IN PLACE OF SECTION 18A:

18A. “18A. Any income received in respect of the enemy property by the Custodian shall be preserved and invested in the same manner as the enemy property from which it is received.”

**CLAUSE 14
8B.**

TO SUBSTITUTE THE FOLLOWING IN PLACE OF SECTION 18A:

“18B. No civil court shall have jurisdiction to order divestment from the Custodian of enemy property vested in him under this Act or direct the Central Government to divest such property from the Custodian.

Expalantion.—For the removal of doubts, it is hereby declared that the civil courts shall have jurisdiction to adjudicate whether the property claimed to be vested in the Custodian is an enemy property or not.”

**CLAUSES OF BILL,
2016**

PROPOSED AMENDMENTS

**CLAUSE 17
22A (b)****TO INSERT THE FOLLOWING PROVISIO AFTER SUB-SECTION
22A. (b)**

“Provided that if the Central Government had, before the commencement of the Enemy Property (Amendment and Validation) Act, 2016, made any order under section 18 as it stood before such commencement, and the property had been returned to the owner or such other person, such property shall, notwithstanding anything contained in this Section, continue to vest in the owner or such other person, as the case may be:

Provided further that if any enemy property had been otherwise divested from the Custodian (by an order of a court or without any direction under section 18) and/or returned to the owner or his lawful heir before the commencement of the Enemy Property (Amendment and Validation) Act, 2016, such property shall, notwithstanding anything contained in this Section, continue to vest in the owner or such other person, as the case may be.”

**CLAUSE 17
22A. (c)****TO INSERT THE FOLLOWING EXPLANATION AFTER SUB
SECTION 22A (c):**

“*Expalantion.*—For the removal of doubts, it is hereby clarified that the civil courts shall have jurisdiction to adjudicate whether the property claimed to be vested in the Custodian is an enemy property or not.”

sd/
K. C. TYAGI, MP

sd/
K. RAHMAN KHAN, MP

sd/
D. RAJA, MP

sd/
P. L. PUNIA, MP

sd/
HUSAIN DALWAI, MP

sd/
JAVED ALI KHAN, MP

ANNEXURE-I

LIST OF WITNESSES WHO APPEARED BEFORE THE SELECT COMMITTEE**MINISTRY OF HOME AFFAIRS**

1. Shri Rajiv Mehrishi, Home Secretary;
2. Shri M. Gopal Reddy, Additional Secretary (Police);
3. Shri V. Shashank Shekhar, JS (C&PG) and FFR;
4. Shri R.B.S. Negi, Deputy Secretary;
5. Shri Utpal Chakraborty, Custodian, Enemy Property; and
6. Ms. Pritha Ganguly, Law Officer.

MINISTRY OF LAW AND JUSTICE

1. Dr. G. Narayana Raju, Secretary, Legislative Department;
2. Shri P.K. Malhotra, Secretary, Department of Legal Affairs;
3. Ms. Reeta Vasistha, Additional Secretary, Legislative Department;
4. Shri R. Sreenivas, Additional Legislative Counsel, Legislative Department;
5. Shri G.C. Mishra, Joint Secretary and Legal Adviser, Department of Legal Affairs;
6. Shri N.R. Battu, Joint Secretary and Legislative Counsel, Legislative Department;
7. Shri G.S. Yadav, Joint Secretary and Legal Adviser;
8. Shrimati Arti Chopra, Assistant Legal Adviser, Department of Legal Affairs; and
9. Shri Hemant Kumar, Assistant Legal adviser.

ATTORNEY GENERAL OF INDIA

Shri Mukul Rohatgi

STATE GOVERNMENT REPRESENTATIVES**Government of Assam**

Dr. A.K. Singh, Principal Secretary

Government of Bihar

Shri Vyasji, Principal Secretary, Revenue and Land Reforms

Government of Chhattisgarh

Shri A.K. Samantaray, Principal Secretary, Department of Law and Legislative Affairs

Government of Gujarat

Shri K. Srinivas, Principal Secretary, Revenue Department

Government of Haryana

Shri Anurag Rastogi, Principal Secretary (Coordination)

Government of Karnataka

Shri Sunil Kumar, Additional DG, Police (Internal Security)

Government of Kerala

1. Dr. Vishwas Mehta, Additional Chief Secretary
2. Shri Gyanesh Kumar, Resident Commissioner;
3. Shri Ajay Kumar, Liaison Officer; and
4. Shri George Kutty, Assistant Liaison Officer.

Government of Madhya Pradesh

Shri Anthony de Sa, Chief Secretary

Government of Meghalaya

Shri L.M. Sangma, Special Secretary, Law Department

Government of Tamil Nadu

Shri Jatindra Nath Swain, Principal Secretary

Government of Telangana

Dr. Rajeev Sharma, Chief Secretary

Shri B.R. Meena, Principal Secretary, Revenue Department

Dr. Shashank Goel, Resident Commissioner

Government of Uttarakhand

1. Shri Ram Singh, Principal Secretary, Law Department; and

2. Shri S.D. Sharma, Resident Commissioner

Government of Uttar Pradesh

1. Shri Anil Kumar Gupta, Chairman, Revenue Council;

2. Shri Suresh Chandra, Principal Secretary, Revenue; and

3. Shri Ajeet Chandra, Advocate, Sitapur.

Government of West Bengal

Shri R.K. Gupta, Principal Secretary (Coordination), Home Department

Government of Daman and Diu

Shri J.B. Singh, Development Commissioner and Revenue Secretary

Government of NCT of Delhi

Shri K.K. Sharma, Chief Secretary

Shri Devesh Singh, Deputy Commissioner-cum-District Magistrate, Central District,
Government of Delhi

Government of Maharashtra

Shri K.H. Govindaraj, Secretary

EXPERTS

1. Dr. Bhalchandra Mungekar, Ex-MP;

2. Shri V.K. Bhasin, Former Law Secretary to Government of India;

3. Shri Chander Uday Singh, Senior Advocate, Supreme Court of India;

4. Shri Rajiv Luthra, Senior Advocate, Supreme Court of India;

5. Shri Arjun Syal, Senior Advocate;

6. Shri Kunal Pradhan, Journalist, India Today Group;

7. Shri Ashraf Ahmed Shaikh, Advocate, Mumbai High Court;

8. Shri Shakeel H. Kazi, Advocate, Mumbai High Court; and

9. Shri Rafiq Desai.

STAKEHOLDERS

1. Shri Mohammad Amir Mohammad Khan;

2. Shri Nitin Rai; and

3. Shri Neeraj Gupta

ANNEXURE-II

**ALIST OF PERSONS/STAKEHOLDERS/EXPERTS WHO SUBMITTED WRITTEN
MEMORANDA**

Sl. No.	Names
1.	Dr. Justice Arijit Pasayat, Retired Judge of Supreme Court
2.	Shri Anand Grover, Senior Advocate, Supreme Court
3.	Shri Dilip A. Vazirani
4.	Shri A K Sadiq
5.	Shri A.B. Singh
6.	Shri Aalim Naqvi
7.	Shri Aamir Syed
8.	Shri Aasgar Shaikh
9.	Shri Abdul
10.	Shri Abdul Hameed Khatri
11.	Shri Abid Rasool Khan
12.	Shri Adil Warsi
13.	Shri Aftab Alam
14.	Shri Aftabazmi
15.	Shri Agha Baqar
16.	Shri Agha Roohi
17.	Ahuja Law Offices
18.	Shri Akbar Batcha
19.	Shri Ali Mohammad
20.	Ali Council of India
21.	All India Shia Husaini Fund
22.	All India Shia Personal Law Board
23.	Shri Amim Ansari
24.	Shri Amir Syed
25.	Shri Anamul Haque
26.	Shri Aneesul Haq
27.	Shri Anwar Husain
28.	Shri Arfi Obaid
29.	Shri Arif Hasan
30.	Shri Asheer Aslam
31.	Shri Asifa Rafiq
32.	Shri Asim
33.	Shri Aslam Rosdar
34.	Shri Ateeq Ahmed
35.	Shri Azad Ali Shah
36.	Shri Azeem Assadi
37.	Shri Dada
38.	Dr. M.R. Madhavan
39.	Dr. S. Kalbe Sadiq
40.	Shri Diwan Singh Chauhan and others

Sl. No.	Names
41.	Shri Eisa
42.	Shri Farook Noor Mohd.
43.	Shri Gazala
44.	Shri Ghiyas Uddin
45.	Shri Ghulam Mohiuddin
46.	Shri Haaqqani
47.	Shri Habiba Khan
48.	Shri Haji Abdul Karim K M Chisthi
49.	Shri Hazim Rashid
50.	Shri Husain Dalwai
51.	Shri I M Khan
52.	Shri Ibrahim Khaleel
53.	Shri Imran Ahmad
54.	Shri Imtiyaz Badeghar
55.	Shri Iqbal Ahmed Khan
56.	Shri Jamal
57.	Jamia-e-Nazmia
58.	Shri Jayaseelan Santhanam
59.	Shri Khursheed Ahmed Siddique
60.	Shri Khwaja Safiddin
61.	Shri Kumail Rizvi
62.	Shri M A Kamalwala
63.	Shri M.A.M. Khan
64.	Shri M H Zulqamain
65.	Shri M. H. Rahman
66.	Mahanta Pt. Chakradhar Sharma
67.	Shri Mahmood Khan
68.	Majlis-e-ulema-e-Hind
69.	Shri Maqbool Saleem
70.	Shri Mazin Khan
71.	Md Muzaffar Alam
72.	Mohamed Ajmal
73.	Md. Arif Khan
74.	Md. Arshad Naeem
75.	Shri I.M. Khan
76.	Mohammad Ehtesham
77.	Mohammad Mehdi
78.	Mohammad Naushad
79.	Mohammad Shakir
80.	Mohammed Rafiq
81.	Mohammed Abdul Samad
82.	Mohammed Ahmed Shaikh
83.	Mohammed Arshad Khan
84.	Mohammed Iqbal
85.	Mohammed Irfani
86.	Mohammed Khan

Sl. No.	Names
87.	Mohammed Sultan Sayyed
88.	Mohd. Uwais
89.	Shri Mohamood Khan
90.	Shri Mohsin Khan
91.	Shri Mr. I Choksi
92.	Shri Mubarik Ali
93.	Shri Mujeeb Khan
94.	Shri Muneer Ahmed
95.	Shri Musaddique Pokar
96.	Shri Nadeem Zaheer Khan
97.	Smt. Naina Singh Roy Saha
98.	Shri Naushad Khan
99.	Shri Navin Kapur
100.	Shri Nayeem Aslam
101.	Shri Nazir Ahamad
102.	Shri Nihall Ahamed Sultan
103.	Shri Pervez Bari
104.	Prakrati Ka Sandesh
105.	Press Legislative Research
106.	Shri Qazi Azeem Ahmed
107.	Shri Rabina Yasmin
108.	Shri Rahul Mahavinesh
109.	Shri Rajen Khan
110.	Shri Ram Puniyani
111.	Shri Reyaz Ahmed
112.	Shri Riyaz Ar
113.	Shri Saad Wali Jaan
114.	Shri S. Saif Abbas Naqvi
115.	Shri S. Venkateswaran
116.	Shri S.K. Gupta
117.	Shri Sameer Quershi
118.	Shri Saroj Kumar Bose
119.	Shri Saud
120.	Shri Shabab Khan
121.	Shri Shaher Name
122.	Shri Shabeeh Haider
123.	Shri Shafiq Ahmad Kidwai
124.	Shri Shahid Hussain
125.	Shri Shahid Khan
126.	Shri Shahid Shaikh
127.	Shri Shahrukh Khan
128.	Shri Shaikh M Ali
129.	Shri Shakeel Ahmad
130.	Shri Shakeel Ahamad Qidwai
131.	Shri Shakeel Ashraf
132.	Shri Shakeel Kazi

Sl. No.	Names
133.	Shri Shamshuddin Navalur
134.	Shri Suhail Yusuf
135.	Shri Syed H.N. Saeed
136.	Syed Husain Afsar
137.	Syed Mohammad Haider Rizvi
138.	Shri Syed Mohammad Haider Rizvi
139.	Shri Syed Mohammad Yunus
140.	Shri Syed Saifullah
141.	Shri Syed Tanvir Rahman
142.	Shri Syed Tanvir Rahman
143.	Shri Tameemul Hassan
144.	Shri Tariq Shamsi
145.	Shri Thanveer Mohammed Sheikh
146.	Shri Venkat
147.	Shri Wamiq Amin
148.	Shri Wasim Maskawale
149.	Shri Yakub Sarodi
150.	Shri Yawar Gazi
151.	Shri Zaheer Abbas
152.	Shri Zamir Ahmad Zumlana